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No. 2795

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Appellant,

vs.

EBNER GOLD MINING COMPANY, a Corporation, THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, ANGUS MACKEY, as Receiver for THE ALASKA-EBNER GOLD MINES COMPANY, a Corporation, and DOWNIE D. MUIR,

Appellees.

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Transcript of Record.

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VOLUME III.

(Pages 801 to 1216, Inclusive.)

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Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1

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(Testimony of Al. Black.)

Q. Did you see any of his men working down the creek on the right-hand side of the creek as you go up except those you saw at the tunnel?

A. I didn't; I couldn't see them over there, anyway.

Q. Why? A. There is a bluff there.

Q. And that shuts off your view? [718—568]

A. Yes.

Q. Now, when you were up there on the hillside where you could see Kinzie's people, what time of day did you say that was? A. The forenoon.

Q. Were you over in the afternoon, too, and saw Kinzie's people working down in the bed of the creek?

A. I think they were run off in the forenoon and they went back down to work on the grade, and they went down and got me arrested, and then what was done after that, I don't know.

Q. What was the work they were doing in the creek up there around the Lotta Claim when you saw them—were they blasting rock or building flumes, or what were they doing, Al?

A. One man was drilling a boulder—there was a big boulder and I think they wanted to get that out of the road, or something, they were drilling that; well, there was some men on the other side of the creek taking down some poles, and I think there was one man, one or two men on the flume.

Q. Did you see them at any time during that day doing any work on a box or piece of flume there at this place? A. I did.

(Testimony of Al. Black.)

Q. Did you see them try to do anything with that box during that day?

A. They tried to put it in the creek.

Q. In Gold Creek?      A. Yes.

Q. Now, you know where they have constructed a dam down the creek—I mean the dam that was in there at the time Judge Cushman tried that Basin case. I will ask you with respect to that dam where was it that Kinzie's people were trying to get this piece of flume in Gold Creek—was it above the dam that they afterwards constructed there or below it?

A. I don't know where the dam was when Judge Cushman tried the case. [719—569]

Q. When did you see the dam that they afterwards constructed?      A. Last Sunday.

Q. So that last Sunday was the first time that you were down there to see the dam?

A. Yes, that is the first time I was down to the dam.

Q. Now, what would you say with respect to the dam as it is now and as you saw it last Sunday, as to whether these people were trying to put their piece of flume in the creek above that point or below that point?

A. It was above where the dam is now.

Q. What time did you quit work on that day of the 3d of October, 1910?

A. When the marshal came up there.

Q. Do you remember approximately what time you were arrested that day?

A. It was along in the afternoon, sometime.

(Testimony of Al. Black.)

Q. Then you didn't go back on the 3d, and when was the next time that you remember that you were down to where you saw them trying to put that piece of flume in' on the 3d?

A. The next time was last Sunday.

Q. Haven't been back to that place since last Sunday? A. Not on the ground since.

Q. You remained in the service of Mr. Mackay and were working where, on the flume line?

A. I worked with the carpenters; I didn't have nothing to do after I was arrested, I had to keep the peace.

Q. You mean you worked with the carpenters that were doing what? A. Building the flume.

Q. You were working on the high-line flume of the Ebner Company or the new flume line?

A. Yes, I was away a while down to Ketchikan, and after I got through there I went to work with the carpenters.

Q. Now, Mr. Black, do you know whether or not the flume that [720—570] was built, the high-line flume of the Ebner Company where it enters the dam, the Ebner dam at the intake, whether it sits on top of the ground or whether it is sunk down in a ditch or excavation?

A. It is excavated down there.

Q. Who did that excavating at that point?

A. I worked on it some, and I think Ed. Sykes, and John Carlson was there, and I don't know who the other fellows were.

Q. What I am trying to get at is, about what time

(Testimony of Al. Black.)

did you make that excavation there at the dam?

A. That was just after he sent the men up.

Q. Was it before October 3d, 1910?

A. It was in September.

Q. In September, 1910?

A. Yes, about the middle, I guess; between the middle and the 20th; between the 15th and the 20th, somewhere along in there—might have been the 22d.

Q. You heard some of Mr. Mackay's testimony this morning?      A. I did.

Q. I will ask you, Mr. Black, if you ever assisted Mr. Mackay in making a temporary headgate there at the dam of the Ebner Company?

A. Yes, we did; after we fed it through we laid some rocks across that way (indicating) so that the high water would not wash it out; we laid some rock down and then we put a couple of boards in the creek and filled it with dirt.

Q. Was there ever any opening cut there in the dam?      A. Yes.

Q. About what time was that opening cut out—was it before October 3d, 1910?

A. Yes, it was two or three days after he sent up the first two or three men that came up there.

[721—571]

Q. In what month, Mr. Black?      A. September.

Q. September, 1910?      A. Yes.

Q. Now, I will ask you if there was any water run out through this cut in the dam into this excavation that you had made there for a flume?

A. There was.

(Testimony of Al. Black.)

Q. Was the water running through that prior to October 3d, 1910?

A. Yes, there was no flume in there, running just through the ground.

Q. Through the excavation? A. Yes.

Q. Do you remember, Mr. Black, when the first box or piece of flume was put in at that place—did you have anything to do with it—who did that, do you know?

A. I don't know whether Mackay—I think they put in some boards there.

Q. You were not up there on the 4th of October?

A. No.

Q. So you don't know anything about the putting in of those boxes that were put in? A. No.

Judge WINN.—I think that is all, your Honor, with this witness.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Al, you went up there about the 11th of August to go to work?

A. I think it was the 11th.

Q. At that time you started to work?

Judge WINN.—Just a minute, there is a question I would like to ask.

Q. (By Judge WINN.)—Do you remember, Mr. Black, about a tent being [722—572] pitched up there somewhere in the neighborhood of the Ebner dam? A. Yes.

Q. Was that about the day you were arrested or after you were arrested?

(Testimony of Al. Black.)

A. Before I was arrested, on that same day, but it was put up—I didn't see it until the afternoon.

Q. That was put up on the same day that you were arrested? A. Yes, sir.

Q. Now, you are pretty well acquainted with the grade over there where the tent was pitched, are you not? A. Yes.

Q. I will ask you where was that tent pitched with reference to the grade?

A. Right in there; it was kind of flat and it was put right in there where he had brushed out for the flume.

Q. Now, do you remember at that time, fixing that as the day, about how much of the flume line was cleared out or graded?

A. We were grading across the road; some of the men were working around by that bridge just beyond the cabin, the Ebner cabin.

Q. How far was it cleared off or graded in the direction of down creek from the Ebner dam; approximately how far down?

A. Oh, I guess about a thousand feet,—maybe more, maybe a little less, I never measured it there. (Questions by Mr. HELLENTHAL.)

Q. Now, between that point and the Ebner dam the ground is level, isn't it—pretty level?

A. Well, it is practically level, only for the flume grade you know, you had to knock off some humps.

Q. But there was no real grade between the tent and the dam, was there?

A. Yes, there is a little grade there, it isn't much;



(Testimony of Al. Black.)

it went from nothing up to a foot and a half, some places a little more. [723—573]

Q. But, as a whole, there was no grading necessary in that neighborhood?

A. Oh, yes; they had to have a grade.

Q. I know, but what I mean is the ground was so level you didn't have to build a grade there?

A. Right where the tent was?

Q. In the neighborhood.

A. He set it right at the edge of the grade; if he had set it where the grade stops he would have set it in the mud.

Q. That is the only place in the neighborhood he could put it up?

A. There is a flat there; he could put it anywhere.

Q. Pretty wet in some places, isn't it?

A. If he put it right in the bed of the creek it would be wet?

Q. Anyway, you went up there about the 11th of August, and shortly after you went there you started to do a little digging in the neighborhood of the old Ebner dam? A. Yes, sir.

Q. Now, the flume of the old Ebner dam fits right up against the face of the dam? A. Yes.

Q. It takes the water right through the dam?

A. Yes, right through the dam.

Q. The dam extends across the creek—quite a large dam—comparatively large for dams in this country? A. No, not very high.

Q. I am talking about the dam, not about the flume at all; the dam is quite a long dam, and extends

(Testimony of Al. Black.)

clear across the creek, which is quite wide.

A. Yes.

Q. And the dam extends clear across the creek?

A. Yes.

Q. And then the flume fits right up against the face of the dam [724—574] and the water runs right into the flume?

A. There is a gate there the same as any place.

Q. What I want to get at, Mr. Black, is this—that the flume sits up against the face of the dam and doesn't take the water above the dam—fits right up against the face of the dam; that is right?

A. The flume goes right through the dam.

Q. Right through the dam?

A. Then at the end of it the water runs in.

The COURT.—Is the top of the flume any higher than the top of the dam? A. I couldn't say.

Q. They would be about the same, wouldn't they?

A. They might be the same; I never noticed.

Q. But, anyhow, it runs right through the flume?

A. Yes.

Q. The cut which has been made through which the flume is put, that was made by you gentlemen sometime in September? A. Yes.

Q. The cut that you made there was simply a cut in the dam?

A. The logs were cut out and the dirt cleared away.

Q. There was some dirt that had washed behind the logs you cut out? A. There was gravel.

Q. And you cleaned that away? A. Yes.



(Testimony of Al. Black.)

Q. There had been some gravel washed in there and you cleaned that away, shoveled out the gravel behind the dam, cut the logs, shoveled out the gravel that had washed over the dam and laid on the other side, and that is the cut you made?

A. Yes, sir.

Q. And the water ran on through that cut?

A. Yes. [725—575]

Q. Ran right along the creek bank as though there had been no dam there?

A. I don't know what you mean.

Q. If there had been no dam there the water would run right along; you just simply cut the hole in the dam so the water could run through the dam?

A. If we hadn't cut the hole the water would have flowed over.

Q. If you hadn't cut the hole the water would have gone over the dam, is that right? A. Certainly.

Q. After you cut the hole the water went through the dam instead of going over the dam?

A. Not all of it, just what they wanted to use; they had some logs—some boards or logs that were cut out of the upper dam that they put in there.

Q. And you put those back in so as to stop the flow of the water? A. Yes.

Q. And before you put those in, the water would run through the dam? A. Certainly.

Q. Instead of running over the dam?

A. Oh, we dammed it up.

Q. You afterwards dammed it up?

A. No, as soon as I had it so that it wouldn't wash

(Testimony of Al. Black.)

out the grade on the other side, just dammed it up so a little water could get out.

Q. Dammed it up so the water couldn't get through it?

A. Some seeped through it and some flowed over it.

Q. But you kept the flow of the creek from going through it?

A. Most of it, because if it had done that it would have washed out the grade.

Q. It would have washed out the other side, and to prevent that [726—576] washing out you dammed up the hole with logs and such other stuff as was handy to keep the water from getting through?

A. Mr. Mackay had some boards and things on the side; I don't know just how it was; I didn't look at the time, I was down on the grade, farther down.

Q. After you put your logs in, he still put some more boards in there to make the headgate, as it were, a little better? A. Yes.

Q. That was to make it tighter.

A. Yes; the next day after we cut it through he got a couple of boards put there.

Q. Then he went up and made the hole a little tighter so the water wouldn't get through?

A. I think he put a couple of boards on the side.

Q. That was the object of putting the temporary headgate in, to keep the water from going through?

A. Something like that.

Q. Now, that was the extent of the work done at that point at that time, wasn't it; it wasn't until

(Testimony of Al. Black.)

quite a long time afterward that you put boxes in?

A. I wasn't there when they put the boxes in, and I don't know when they put them in.

Q. They were not put in until sometime afterward?

A. They were put in while we were arrested.

Q. That was in October. Now, on the 3d of October you were down on the Lotta claim?

A. Yes, sir.

Q. And were trying to prevent the fellows that went up there to put in the dam from putting the dam in? A. Yes; that is what we done.

Q. And rolled rocks down, and blasted rocks down to keep them from working at the dam? [727—577] A. Yes.

Q. And that is what you were arrested for, isn't it? A. Yes—I don't know—

Q. That is what the jury found you guilty of, isn't it? A. Found guilty of simple assault.

Q. But that was in connection with that rock rolling down the hill? A. Yes.

Q. And you say you prevented Kinzie's men, or the Alaska-Juneau Company's men from putting in any dam on the morning of October 3d? A. Yes.

Q. Drove them out of there? A. Yes.

Q. Now, at that time there was one man trying to drill a hole in the rock, and you say others were taking down poles? A. Yes.

Q. You knew what the poles were going down there for, didn't you—to put in the dam?

(Testimony of Al. Black.)

A. Yes.

Q. That was the object of it?

A. I guess so.

Q. They were building a flume-box a little ways up the creek?

A. I think they built the box on the old high flume and took it down—now, I wouldn't say for sure.

Q. You wouldn't say for sure?

A. I know that they had it in the creek or in the road and took it down to the creek.

Q. About three o'clock in the afternoon you left there?

A. It was sometime in the afternoon.

Q. Now, sometime before you left they had taken that box and fastened it with a rope?

A. Yes, sir. [728—578]

Q. Getting it ready to float further down?

A. I don't know the object of it.

Q. They hadn't put the box in the creek and turned the water through it—it was simply that they had it fastened, and fastened with ropes?

A. We told them to look out, that we was going to roll some rocks down and they had to get out of there, and a rock came down and hit it.

Q. Before you left there they had it tied a little above the place where they afterwards put the dam in, didn't they, on the bank of the creek or in the creek?

A. When I left there it was all broken to pieces.

Q. They had to build another new one?

A. I don't know if they put in any other one or not.

(Testimony of Al. Black.)

Q. You don't know where the poles were put in afterwards?

A. I know now, didn't know then. They had two poles on the bank, stretched across on to a boulder as a bridge or something; the box was above that.

Q. The box was quite a ways above that?

A. 8 or 10 feet, maybe more.

Q. Now, the place where the fellow was drilling the hole in the rock, that was a little above where the dam was afterwards put, was it not, just above the falls?

A. Oh, it is about 50 or 60 feet further.

(Whereupon a recess was had for ten minutes.)

Q. Mr. Black, you left there about three o'clock in the afternoon of October 3d, and I think you said you didn't go back for a long time afterwards—that is to say, that place where the dam is?

A. Never went back until last Sunday.

Q. Do you think you would know that rock if you saw a picture of it that the man was drilling on?

A. I don't know. [729—579]

Q. I call your attention to a picture, marked Plaintiff's Exhibit 3, and direct your attention to the rock there on the side of the creek and ask if that is the same rock that the man was drilling, as near as you can remember from the picture?

A. I couldn't say; I can't make anything out of this picture.

Q. That picture is taken from down the creek looking up, isn't it—you were standing up the creek looking down? A. I don't know.

(Testimony of Al. Black.)

Q. You are not able to tell from the picture whether that is the same rock or not, Mr. Black?

A. I couldn't tell; I couldn't tell if this picture is upside down or how it is only from the reading on the bottom.

Q. You couldn't swear positively whether or not, from the picture, that is the rock—the rock doesn't show clear enough?     A. Not from that picture.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. I will ask you, Mr. Black, if you know how the bottom of that excavation that you made at the dam there is with respect to the bed of the creek, is the bottom of the excavation lower or higher than the bed of the creek?     A. Why, it is higher.

Q. Consequently, the bottom of the flume that you put in would be higher than the bottom of the creek right down below it?

A. Yes; the grade, you know, it started in at nothing and it run up, I should judge, 6 feet, or it may be 8 feet.

Q. How deep down was that excavation, and how wide?

A. I think it was 8 feet wide, if I remember right and about six feet high—I ain't sure.

Q. And then it ran out to nothing?

A. Yes. [730—580]

Judge WINN.—Now, I desire to recall the witness, if your Honor, please.

The COURT.—Very well.



(Testimony of Al. Black.)

AL BLACK, upon being recalled for further examination, testified in behalf of the defendant as follows:

Direct Examination.

(By Judge WINN.)

Q. I will ask you under whose instruction was it that this water was turned through this cut that you made in the dam, into this ditch?

A. Under Mr. Burton's.

Q. What was your purpose in running the water through there? A. It was in your office.

Q. That he advised you, but what was your purpose in turning the water through?

A. To make a diversion of the water is what they told me.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. I hand you here a photograph marked for identification, Plaintiff's Exhibit No. 29, and ask you to look at it and tell me if that isn't a correct picture of the Ebner dam and flume as it was constructed. A. It looks like it.

Q. That is a picture of it, isn't it; it shows the dam and flume, and just where it takes the water through the dam? A. A picture as it looks now.

Q. Never been changed, has it, since it was first built? A. Yes, it has.

Q. The intake, Mr. Black, has that been changed?  
[731—581]

A. There are a lot of things built on here.

(Testimony of Al. Black.)

Q. The flume was made a little larger, but the intake, I mean, is the same, isn't it?

Judge WINN.—What date, Mr. Hellenthal?

Q. The picture shows the intake just as it was when it was first completed in October, 1910, isn't that right, Mr. Black?

A. No, it ain't the same as it was then.

Q. What are the changes?

A. There are several changes here.

Q. Tell me what they are?

A. It looks to me in the picture as if it was all graded up around here since.

Q. I know, but I am talking about the flume and the dam; they are just the same, aren't they?

A. Well, it is in the same place, the headgate or the intake.

Q. The intake is just the same?

A. It looks to me about the same place, but this picture don't look the same as if I was up there.

Q. That picture shows the intake of the flume, doesn't it?

A. No, it shows the flume going into the dam.

Q. Shows the flume going into the dam—shows where it enters the dam, doesn't it?     A. Yes.

Q. That is the same place it always entered the dam, isn't it, since it was put in?

A. Yes, but you see it looks like it was taken end-ways of it, and you cannot see where this cut was made.

Q. I am not talking about the cut,—I am talking about the flume.



(Testimony of Al. Black.)

(Not answered because of objection.)

Q. That shows the flume, Mr. Black—where the flume enters the dam just as it was when it was first put in there, don't it?     A. No. [732—582]

Q. What is the difference?

A. Well, there is a whole lot of difference; you see there is water way over on this side, this looks like the dam had broke out there.

Q. I am talking about the place where the flume enters the dam?     A. Yes, it looks like—

Q. That is just the same, isn't it?

A. It might be, that looks something like it but I can't say for sure.

Q. You cannot see any change between the conditions there when the flume was first put across the dam, or into the dam, or up to the dam, or whatever you might call it, and the conditions as they show on the picture—they are just the same, aren't they?

A. No, I couldn't say it is the same as it was then.

Q. Could you tell me any changes that have been made there?

A. I can just see a piece of the flume here; I can't see the Basin wagon-road, and from the looks of that picture I couldn't say for sure whether that is a picture of that dam up there or some other dam.

Q. You can tell that is the Ebner dam, can't you?

A. No, that might be a dam somewhere else.

Q. If that isn't the Ebner dam it is a dam that looks just like it, isn't it?

A. I cannot see the old Ebner flume on this side; I couldn't say for sure whether that is that dam or

(Testimony of Al. Black.)

some other one from that picture, there ought to be a flume there, you cannot see that.

Q. Anyhow, Mr. Black, the picture shows the bank of the creek, doesn't it, the ground that is covered by the brush where the brush runs off the creek?

(Not answered because of objection.)

Q. Now, the flume where it was put into the dam was put some few feet towards the center of the creek from the end of the [733—583] dam, wasn't it? A. I don't think so.

Q. Where was it with reference to the end of the dam—where did the flume abut up against the dam?

A. Well, the water came in right at the dam.

Q. The water ran right through the dam into the flume?

A. No, the flume went right to the end of the dam and then the water ran in.

Q. There was a hole cut through the dam itself and the water was put through that hole, and the water ran through the flume,—and through the dam into that flume, and that flume was standing on the ground that was lying up against the dam on the bed of the creek, isn't that right— that is to say it would depend on whether or not the water came up, but the flume was standing right up against the dam in the bed of the creek?

A. It went into the dam the same as they put most any flume I have seen—put it right through the dam.

Q. And the cut that was made, through which the water ran, was the same excavation in which the

(Testimony of Al. Black.)

flume now stands, if there is an excavation—is that right?

A. I think so; the water went through the dam into the flume.

Q. And when you let the water run though there it merely ran through one side of the dam on through down the creek?

A. Yes, it ran through the cut there because it washed out some of the grade that we made.

Q. Ran right along into the creek? A. Yes.

Q. It remained right in the channel of the creek, ran up to the dam—that is right isn't it; the dam was across the channel of the creek? A. Yes.

Q. Followed the channel of the creek, ran up to the dam, ran through the dam and down the creek, isn't that right? [734—584] A. Yes.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Now, let us understand you, Mr. Black; the portion of the cut wasn't in the creek bed was it—the cut was made to put the flume in, that wasn't in the bed of the creek, was it?

A. No, it was in the dam. I didn't understand either of those questions, Mr. Hellenthal's or yours.

Q. I mean this open cut that you made at the dam to put the flume in, that open cut wasn't in the bottom of the creek, it was up on the bank—the excavation? A. Yes, it was out on the bank.

Q. Then the water that ran through that excavation or that ditch that you cut there to put the flume

(Testimony of Al. Black.)

in, ran through that to the end of it, and then ran out on the ground and into the creek?

A. Went back into the creek again, wouldn't run any place else.

(By Mr. HELLENTHAL.) Permit me to ask him a question Mr. Black, I want to direct your attention to Defendant's Exhibit "Z," which is a photograph taken, I think, on November 4th, 1910, taken from above the dam; I ask you to look at that; that shows the intake of the flume, where the flume enters the dam, does it not? A. This doesn't tell here.

Q. You see the dam, don't you?

A. I see the dam here.

Q. The dam extends here a great distance beyond the intake of the flume, doesn't it? A. Beyond?

Q. The flume isn't on the end of the dam—the intake I am talking [735—485] about the place where the cut was made?

A. Here is the intake right here (indicating).

Q. That isn't anywhere near the end of the dam; the dam extends clear across the face of the picture?

A. Yes.

Q. And the hole that you made is pretty near the middle of the picture?

A. It wasn't in the end of the dam, no; of course it was put in the middle of the dam.

Q. The dam was built clear across the creek?

A. Certainly.

Q. And the flume was laid in the middle of the dam? A. Yes.

Q. Part of the dam was on one side of the hole that

(Testimony of Al. Black.)

you made, and part of it was on the other side?

A. Yes.

Q. There is a considerable piece of dam on both sides of where the hole was made? A. Yes.

Q. Right in the middle of the dam? A. Yes.

Q. And the dam extended from one side of the creek to the other side of the creek? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [736—586]

The defendant, further to maintain the issues on its part, introduced as a witness DAN RIORDAN, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Dan Riordan, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. Dan, did you work up on Gold Creek in 1910, for Mr. Mackay? A. 1910?

Q. Yes. A. Yes, sir.

Q. Were you working up there on the Ebner property on October 3d, 1910? A. Yes, sir.

Q. Did you see Mr. Kinzie's people, or some of the Alaska-Juneau people up there on October 3d?

A. Yes, sir.

Q. You know where the dam of the Alaska-Juneau Company is now, don't you? A. Yes.

Q. And you know where the dam was at the time that the case was tried before Judge Cushman here; you were a witness here in that case, I believe, back

(Testimony of Dan Riordan.)

in May, 1911, you remember that?      A. Yes, sir.

Q. You know where the dam was then at that time, do you?      A. I do.

Q. Now, where were Mr. Kinzie and his people working on Gold Creek on the 3d day of October, 1910, with respect to where the dam was when Judge Cushman tried the case, and with respect [737—587] to where the dam is now—were the Alaska-Juneau people working on the dam above the dam or down below the dam?

A. They were working on the left-hand side of the creek going north.

Q. Would that be above the creek?

A. Up the stream.

Q. You know where the dam is now?      A. Yes.

Q. And were they working up the stream or down the stream with reference to where the dam is now?

A. They were working about opposite.

Q. Some of them were working on the bank of the creek; was there anybody down in the bed of the creek?

A. There was some men making a box, and some of them were pulling logs down the hill.

Q. Did you see them try to do anything with that box on the afternoon of October 3d?

A. I seen them putting it into the creek with a rope on each end of it.

Q. Where did they put it in the creek with reference to where the dam is now—above the dam or below it?      A. Above the dam.



(Testimony of Dan Riordan.)

Q. Now, did you go up to that place on the morning of the 4th of October, the next morning after Mackay and Al Black were arrested—did you go up to this same place?     A. Yes.

Q. Did you see anything up there then in the creek?

A. Yes, I seen a box in the creek.

Q. Now, that box was in the creek then; was that up above where the dam is now, or down below where the dam is?     A. Above where the dam is now.

Q. How was that box in the creek—did it just lie in the bed of the creek, or did one end lie in the bed of the creek and the [738—588] other run out on the bank?

A. The whole box laid in the creek.

Q. Did you notice how the box was fastened in; was it tied in, or how was it; did you go down to see?

A. No.

Q. I will ask you if you saw two logs across the creek up there that next morning?

A. The morning of the 4th?

Q. Yes.

A. No, sir; I didn't see no logs the morning of the 4th.

Q. Did they put in any logs on the day of the 3d of October?     A. Yes, sir.

Q. How many logs did they put in across the creek up there?     A. I think it was two.

Q. Were those logs above where the present dam is, or below—the logs they had across the creek,

(Testimony of Dan Riordan.)

were they up creek from the dam where it is now, or down the creek?

A. Down the creek from the dam—what dam do you mean?

Q. I am talking about the logs that were in there on the 3d—did you see them put two logs across the creek? A. Yes.

Q. I am asking you where those logs were put in on the 3d, whether they were up the creek from the present dam, or down the creek from the present dam? A. Up the creek.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Riordan, you went up there on the 3d, you say? A. Yes, sir.

Q. Were you with the fellows who were rolling rocks down the hill? [739—589]

A. Yes, sir.

Q. Down on the fellows that were working down below? A. Yes.

Q. And you noticed the men working down there on the ground, didn't you? A. Yes, sir.

Q. They were building a box—one thing they were doing? A. Yes, sir.

Q. And other fellows were taking some poles or logs down? A. Yes, sir.

Q. Did you know what those logs were for?

A. I didn't then.

Q. They were going to build a dam, weren't they?

A. I couldn't say.



(Testimony of Dan Riordan.)

Q. They put them across the creek?

A. Two of them across the creek is all I ever seen.

Q. And put some brush behind the logs?

A. I didn't notice that.

Q. Put some rocks and brush behind them,—you didn't notice that, couldn't see that from where you were?     A. I couldn't.

Q. How far away were you?

A. All the way from 60 to 150 feet.

Q. You were up higher on the hillside—you were up a couple of hundred feet?     A. Maybe.

Q. They built that box there on the 3d day of October, you remember that?     A. I do.

Q. And they took it down and tied it into the creek in the afternoon, didn't they?

A. Yes, sir.

Q. Just sunk it in the creek and tied it there?

[740—590]     A. Yes, sir.

Q. When did you leave there on the 3d of October—did you stay there the whole day?

A. About half-past five.

Q. You don't know what they did there between half-past five on the third of October and the next morning?     A. No, sir.

Q. You don't know if they built a dam, put the box in the creek, and took away the water at that time or not?

A. Not after half-past five of the 3d.

Q. In the morning when you came back didn't you see those logs across the creek?

(Testimony of Dan Riordan.)

A. No, I didn't see them; there was none there that I could see.

Q. You wouldn't testify now that there were no logs across the creek on the morning of the 4th?

A. Didn't see them there on the morning of the 4th.

Q. Didn't you see the logs that were put there the day before?

A. I seen logs on the side but not in the center.

Q. No logs across the creek?

A. Not that I could see.

Q. You didn't see the flume in the creek on the morning of the 4th?     A. Yes.

Q. You remember that fellow drilling a rock on the bank of the creek on the 3d of October, don't you?     A. I do.

Q. That rock was right where the logs were put across the creek, wasn't it?

A. Which, the rock that was on top of the two boulders?

Q. Yes.     A. That was below them logs.

Q. How far below where the logs were?

A. I couldn't just state how far. [741—591]

Q. The rock was right above the falls, wasn't it?

A. Yes, sir.

Q. Right above the falls the man was drilling a hole in the rock?     A. Yes.

Q. And when you saw the logs they hadn't got down to that point yet?

A. I didn't see them any more after that day.

Q. Do you remember what the conditions were

(Testimony of Dan Riordan.)

with reference to the logs across the creek, or where the man was drilling the rock on the morning of the 3d—you didn't notice the place where the man was drilling the next morning? A. No.

Q. And you don't know whether there was a flume there or not?

A. When the man was drilling the rock there was none there.

Q. You didn't notice the next morning whether there was a flume or not? A. No.

Q. Didn't notice whether there was a dam across there the next morning or not?

A. The water was too high.

Q. You couldn't see it because the water was too high? A. You couldn't see it.

Mr. HELLENTHAL.—That's all.

Q. (By Judge WINN.) You say the water was too high, what do you mean?

A. If there was any logs there the water would be over them and you couldn't see the logs.

Judge WINN.—I ask the privilege of asking him a question on direct examination.

Q. Did you ever build any dams, Mr. Riordan?

A. Lots of them.

Q. Now, what would you say as to whether or not a dam could have been put in the creek at that stage of water?

(Objected to and not answered.)

(Witness excused.) [742—592]

(Testimony of George Jacaleve.)

The defendant, to further maintain the issues on its part, introduced as a witness GEORGE JACALEVE, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of George Jacaleve, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. George, how long have you lived in and about Juneau?     A. About 18 years.

Q. You know Mr. Mackay, don't you?

A. I do.

Q. Did you ever do any work for Mr. Mackay in 1910, George?     A. I did.

Q. Where?     A. Up at the Ebner property.

Q. You remember approximately what time you commenced working for Mr. Mackay, and how long you continued that work up there on the Ebner property?

A. I started in there about the 1st of October, 1910; I quit the 4th of October, 1911.

Q. Quit when?

A. October 4th, 1911; a little over a year I worked up there.

Q. Then, you were up there then on October 3d, 1910?     A. Yes, sir, I was.

Q. Where were you working, George?

A. On the open cut above where the Alaska-Juneau dam is now.

Q. Did you notice any people go up there in the

(Testimony of George Jacaleve.)

bed of the creek? A. I did.

Q. On October 3d, 1910? A. I did.

Q. Did you see Mr. Kinzie up there? [743—593]

A. Yes, sir.

Q. And some men with him? A. Yes, sir.

Q. About how many men, George, do you remember, approximately?

A. Eight or ten, something like that.

Q. You know where the Alaska-Juneau dam is now, do you? A. Yes, sir.

Q. And you were working all through that season up there—do you know how it was built, when it was first built—that is before Judge Cushman tried the case?

A. I don't know anything about the Cushman case.

Q. Well, we will confine the proposition then to the condition the dam is now. Do you know as to whether or not there was ever any alterations made in that dam after they first built it, the Alaska-Juneau dam, or do you just know it was as it is now, George?

A. I know there was a box there put up before they built the dam where the dam is now.

Q. Where was Kinzie's people working with reference to where the Alaska-Juneau dam is now, up or down the creek?

A. They were down in the creek.

Q. Was there any up the creek from the Alaska-Juneau dam—any working, going up the creek?

(Testimony of George Jacaleve.)

A. Up the creek, where the Alaska-Juneau dam now is?

Q. Yes.

A. They were opposite on the old flume.

Q. What were they doing over there?

A. They were building boxes.

Q. Now, did you see them put that box in the water into Gold Creek?     A. No, I didn't.

Q. I will ask you if you saw Kinzie's people trying to put that box in the creek on October 3d, the day that Mackay was arrested?

A. I seen them taking a box and timber around back and forth, [744—594] but I don't know just exactly what they were doing; they tried to put some logs in the creek.

Q. Were you back there on the morning of the 4th?     A. I was.

Q. Did you see any box in the creek up there the next morning?     A. Yes.

Q. On the 4th?     A. Yes.

Q. Do you know how it was fastened, George?

A. It was fastened a ways down so I don't know if it was moving around in the water; there was plenty of water in the creek.

Q. Now, where was that piece of flume in the creek—was it above the Alaska-Juneau dam as it is now built?     A. Above the dam.

Q. And you could say about how many feet, that is, approximately?

A. Cannot say exactly; between 40 and 50 feet,



(Testimony of George Jacaleve.)

something like that; I don't know, it is hard to tell, it is quite a ways up.

Q. Did you stay around there the day of the 4th, or where did you work on the 4th, the day after Mackay was arrested?

A. I was there working in the shop there.

Q. What time was it that you saw this box that you have just described in the creek on the 4th, was it in the afternoon or morning?

A. About 10 o'clock in the morning.

Q. Did you see anything else at that time across the creek?

A. I think there were some logs across the creek; I am not sure.

Q. You saw the logs the day before?

A. Yes, I did.

Q. How many were there?

A. Three or four, I don't know; they were all piled up against two boulders.

Q. That was all you saw of the logs?

A. Yes. [745—595]

Q. Did you see them there on the morning of the 4th? A. Yes.

Q. Was there any dam built across those logs or underneath the logs?

A. No, just a little box above the logs in the water.

Q. How was the box that was in the creek, George—was it lying in the bed of the creek, or was part of it in the creek and the other part out on the bank?

(Testimony of George Jacaleve.)

A. It was all in the water so that the water could run through; it was moving, jumping around, too much water in the creek.

Q. It was turning around when you saw it?

A. Yes.

Q. Did you work on the flume grade, George?

A. I had started to work there the first day when I commenced.

Q. What were you doing up there during all that year you were there with Mr. Mackay?

A. All year?

Q. Yes.

A. All kinds of work; I was watchman, worked in the blacksmith-shop three or four months, and was all around.

Q. Did you ever see a tent up there near the Ebner dam, George?      A. I did.

Q. When did you first see that tent there?

A. On the evening of October 4th, when I went out to work in the shop.

Q. Who was in the tent, if you know, at that time?

A. A fellow by the name of Harri.

Q. Was anyone else there with him?

A. Not that night.

Q. Did any other man come there with Harri at any time the tent was there, or stay with Harri?

A. Yes, I believe the next day. [746—596]

Q. Who was that fellow, do you know?

A. A fellow by the name of Scotty Bruce.

Q. How long did he stay there with Harri?

A. I don't remember; he was there quite a little



(Testimony of George Jacaleve.)

while, a week or two weeks.

Q. Do you remember, George, about how much of the high-line flume of the Ebner Company, which Mr. Mackay built—do you know about how much of that was cleared away or graded when Harri went up there to put his tent up—commencing at the point of the dam and going down creek, approximately?

A. About 1,500 or 2,000 feet along from the dam down the creek.

Q. Where was Harri's tent put with reference to the laid-out flume line or grade, was it on it, or how?

A. It was part on it, and he ran all around a fence so you couldn't get on it.

Q. You saw that fence?

A. I saw that fence—didn't see it put up.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That was a good tent Harri put up there, wasn't it?

A. It was pretty good, nothing extra, small tent.

Q. Now, when you were up there the 3d of October you saw three or four logs put across the creek?

A. Yes.

Q. Those logs were probably in the same place the next morning?

A. I think they were in the same place.

Q. Some brush piled behind the logs?

A. Didn't see it.

(Testimony of George Jacaleve.)

Q. Some rocks piled on the brush?

A. I didn't see any brush. [747—597]

Q. You were quite a ways from the brush?

A. Yes.

Q. About 200 feet? A. Yes.

Q. And if this brush was there, you wouldn't see it? A. I don't think so.

Q. Did you notice the man drilling a hole in the rock? A. I did.

Q. Was that a little above the falls?

A. Right in the falls, some place there.

Q. Right near the falls? A. Yes.

Q. Right at the falls, the rock was that he was drilling, wasn't it?

A. Yes. I know the place.

Q. How is that, right at the falls?

A. Right on the falls.

Q. And the logs were put across the creek right there where the man was drilling the hole?

A. No, they were above.

Q. When did you see the logs across the creek?

A. As soon as I came out to work there.

Q. On October 3d?

A. On October 3d, yes, sir.

Q. How did the man get over to that rock from the other side?

A. Well, jumped from one log to the other.

Q. The creek was pretty high, wasn't it?

A. Sometimes they walked over the logs.

Q. Weren't the logs right there while the man was drilling on the rock? A. Yes.

(Testimony of George Jacaleve.)

Q. They were right there where the rock was being drilled, weren't they. [748—598]

A. They were right near there.

Q. They were not more than two or three feet from where the man was working?

A. 40 or 50 feet, quite a long ways.

Q. That was on the 3d?

A. The 3d and the 4th.

Q. You didn't see the logs on the morning of the 4th, did you? A. I did.

Q. Didn't you testify in answer to Judge Winn's question that you didn't see them?

A. I did see them, I didn't testify that I didn't see them.

Q. Did you see them in the morning at the same place? The morning of the 4th?

A. Same place.

Q. Above where the man was drilling rock?

A. Yes, sir.

Q. How were the logs anchored?

A. Behind two big boulders.

Q. Were they large boulders they were anchored behind? A. Yes, sir.

Q. And the flume that you saw on the morning of the 4th was right at the place where the logs were?

A. It is pretty close to the logs.

Q. Right at one side of where the logs were?

A. Yes, sir.

Q. So that the water, if it was turned in the creek at the logs it would run into that flume?

A. I believe that was their intention.

(Testimony of George Jacaleve.)

Q. That was the way it was placed, wasn't it?

A. Yes, sir.

Q. That flume was anchored right behind that rock that the man was drilling?

A. Away back. [749—599]

Q. It was not right behind the rock that the man was drilling on, are you positive about that?

A. I am positive, yes.

Q. Now, on the morning of the 4th did you know it was an important thing to find out where that flume was?      A. No.

Q. Did you pay any particular attention to where it was?

A. We seen it as soon as we got down there.

Q. Did you have any object in taking notice of where that flume was on the morning of the 4th?

A. We always seen what the boys were doing.

Q. How is that?

A. That day as soon as we came down we commenced looking around to see who was down there.

Q. The flume wasn't broken up, was it?

A. Yes.

Q. What happened to it?

A. Rocks rolled down there and busted it.

Q. What day was it broken up?

A. The 4th.

Q. Who broke it up?      A. We did.

Q. You are one of the men who broke it?

A. I don't know who done it, we done it.

Q. How is that?

(Testimony of George Jacaleve.)

A. I don't know who done it, our crew done it.

Q. You rolled the rocks down and broke the flume?     A. Yes.

Q. You had nothing particular to call your attention to the particular position of where that flume was on the morning of the 4th?

A. I know where it was now on the 4th; yes, I do.  
[750—600]

Q. What?     A. I know where it was.

Q. Now, don't you know as a matter of fact there are not two rocks in that creek up to within 50 feet of where the dam now is where those logs could be anchored except at the place where the dam is?

A. I don't know; I saw that dam alongside the logs, and the logs behind the two boulders; that is all I know about it.

Q. The only two boulders behind which you could put those logs are the two right behind the logs?

A. Yes, sir.

Q. Those are the only two boulders that there are there?     A. Lots more down the creek.

Q. I mean up the creek between 40 and 50 feet, there are no boulders you could anchor those logs to, are there?     A. No.

Q. No boulders above there, are there?     A. No.

Q. And the logs are anchored behind two boulders?     A. Yes.

Q. And that the flume was right to one side of the logs where if the logs were made into a dam the water would be turned into the flume?

A. It was something like it, and *the a* small box.—

(Testimony of George Jacaleve.)

Q. That box was right between the boulder they were drilling on and the bank, wasn't it?

A. No, it was way up on the one that they were drilling on.

Q. Away above it, yes?      A. Yes.

Q. And the flume, though, was right on one side of the creek so that the water would be turned into it by the logs?      A. I guess it is.

Q. And the logs were behind two boulders?

A. Yes, sir. [751—601]

Q. And the only two boulders that were there were right behind the two logs?

Judge WINN.—Are there other boulders up the creek?      A. Away up, yes, not right there.

Q. (By Mr. HELLENTHAL.) You don't know whether any of those boulders then have been removed since that time, do you?      A. I do not.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(WITNESS EXCUSED.)

(Whereupon court adjourned until to-morrow morning.) [752—602]

#### MORNING SESSION.

July 30, 1914, 10 A. M.

The defendant, further to maintain the issues on its part, introduced as a witness OSCAR HARRI, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:



**Testimony of Oscar Harri, for Defendant.**

**Direct Examination.**

(By Judge WINN.)

Q. Your name is Oscar Harri?      A. Yes, sir.

Q. How long, Mr. Harri, have you lived in and about the town of Juneau?      A. Since 1902.

Q. You are somewhat acquainted with the Ebner Gold Mining Company's property, aren't you, Mr. Harri?      A. Yes, sir.

Q. You were watchman up there for some length of time and worked around on the property, or in the employ, while Mr. Ebner was running it, didn't you?      A. Yes, sir.

Q. Now, I will ask you, Mr. Harri, if you also worked, or were in the employ, or on the property up there at some of the time that Mr. Tripp was up there, in 1909?      A. Yes, sir.

Q. Were you still watchman and keeper of the property?      A. Yes.

Q. Part of the time he was there?      A. Yes.

Q. Now, you have had pointed out to you what is the lower side line of what is called the Lotta Lode claim on that property; haven't [753—603] you?

A. Yes.

Q. I will ask you, Mr. Harri, if you had anything to do with brushing out that lower side line of the Lotta claim in 1908?      A. Yes.

Q. Do you know where there is a cabin across the creek that is claimed to be on the Lotta Lode claim?

A. Yes.

Q. That is on the right-hand side of the creek as

(Testimony of Oscar Harri.)

you go up the creek?      A. Yes.

Q. I will ask you if you ever saw any corner stake in and about that cabin in 1908?      A. Yes, I saw it.

Q. To the best of your remembrance what was there there, Mr. Harri—a new stake or an old stake, one stake or two stakes?

A. Just a little above the cabin there was an old stake, and a new one was put right along that one and tied up to the old one.

Q. Now, then, did you ever see any other stake at that time across the creek and along near the Basin road?      A. Yes.

Q. You saw a stake there?      A. Yes.

Q. Where with reference to these two stakes now that you have testified concerning was the line that you brushed out—was it between the stakes or below the line of the stakes or up above the line of the stakes—where was it with reference to those stakes that you testified you brushed out?

A. The one that was on the Basin road, the line was brushed out up to the stake.

Q. Up to the stake, by the cabin?      [754—604]

A. Up to the stake by the cabin, yes.

Q. Then you commenced at that stake at the cabin, did you, and brushed down to Gold Creek?

A. Down to Gold Creek, yes, sir.

Q. Did you see any flag or anything put up at any point near there?

A. Flag on a post and a flag on the Basin road up by the cabin.

Q. There was a flag on a post there by the cabin

(Testimony of Oscar Harri.)

and also a flag you say on a post near the Basin road?

A. Yes.

Q. And was it between those two posts that you brushed out?

A. Yes, sir.

Q. Down the creek from the cabin?

A. Yes.

Q. Just tell, Mr. Harri, to the Court how you brushed out that piece from the stake there by the cabin over to the creek?

A. Brushed down the loose ground on the line, and went from the post down to the creek as far as we could; then we went across the roadside and you couldn't see through it, and we had to go over it and cut it out again; the limbs were hanging over the line and you couldn't see it from the road.

Q. Then you went over it the second time and cut out these limbs that hung from the big alders over the line?

A. It was cut about 16 to 20 feet wide all along.

The COURT.—How wide?

A. About 16 to 20 feet; I don't remember, that is as near as I can tell.

Q. Were you up there in 1910—you were in 1909 while Mr. Tripp was there?

A. Yes, I was there all the time.

Q. I will ask you to state to the Court as to whether or not that brushed out line could be seen at that time?

A. It could be easily seen.

Q. In 1909 and 1910?

A. Yes. [755—605]

The COURT.—What part of 1910—when in 1910?

Q. You were up there in 1910 to what time, Mr.

(Testimony of Oscar Harri.)

Harri—to refresh your memory on that, you know when the Ebner people came up here and Mr. Tripp turned over some things to them and Mr. Tripp quit work up on the property?

A. I think Mr. Tripp—well, he was up there and worked from about the middle of August until January 10th, when he lost out there.

Q. Now, I think the dates, Mr. Harri, that Mr. Tripp—in order to refresh your memory—that he quit up there was sometime in August, 1910, when the Bent people came,—now, what part of 1910 were you on the property, was it before August or after August? A. It was before August.

A. Before August 1st? A. Yes, sir.

Q. You were up there on the property, and that is the time you say this brushed out line could be seen?

A. Yes.

The COURT.—Do you know how long before?

A. I can't remember just exactly.

Q. Were you on the property in 1910 when Mr. Mackay had charge, too, Mr. Harri—did you work any for him?

A. I was working for Mr. Mackay first when he started the compressor there; I ran the compressor for him.

Q. You mean the old compressor down in the creek bed? A. Yes; the old compressor.

Q. Do you remember, Mr. Harri, of being up on this property in July when Mr. Bent's party was here? A. Yes, I was up there then.

(Testimony of Oscar Harri.)

Q. And you were up there in the month of June, 1910, weren't you?

A. Yes, I was there in June and July.

Q. I will ask you if you were there about the Ebner dam at any [756—606] time in June, 1910?

A. Yes, several times.

Q. Did you see any notice posted on the dam in June, 1910, Mr. Harri, or paper? A. Yes, I did.

Q. Do you remember whose name was signed to any paper that you saw posted on the Ebner dam in June, 1910?

A. The notice was signed by H. T. Tripp.

Q. Do you remember anything about it saying how many miner's inches of water was claimed?

A. It was 10,000 miner's inches.

Q. When was the last time, Mr. Harri, that you saw that notice posted on the Ebner dam?

A. I think it was the time that Mr. Bent came up; it was in July, I believe; it was in July, when I went up, that was the last time I went up there.

Q. When you went up there with Mr. Bent and his party was the notice still posted on the dam?

A. Yes, I saw it there.

Judge WINN.—That's all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Did you personally observe that lower side line of the Lotta during June or July of 1910, Mr. Harri, or don't you remember whether you specially looked at it or not? A. If I didn't, I saw it.

Q. Do you remember that you took special notice

(Testimony of Oscar Harri.)

of that brushed out line during June or July of 1910, or don't you remember whether you took special notice of it or not at that time?

The COURT.—The brushed out line?

A. I couldn't help it. [757—607]

Q. Do you remember of seeing it during those months?     A. Yes, sir.

Q. What time during the months did you see it?

A. I seen it any time I passed on the road, you could see that line, couldn't help but see it.

Q. You could see it from the Basin road?

A. Yes, sir.

Q. That is the only place you ever looked at it from?

A. I saw it right on the line, too, near the cabin.

Q. When?     A. In the summer.

Q. What time in the summer?

A. I don't know the dates, I was there several times during the summer.

Q. Tell me one time when you were there, about what time?

A. I couldn't remember the dates exactly.

Q. Did you see that line every time you passed by there?     A. Yes, sir.

Q. Did you always look to see if that line was still there—did you—what is your answer?

A. I seen the line; that is all I can say.

Q. Did you see it every time you went by there?

A. I think I did.

Q. Every time you went by there, how often did you go by there in June or July of that year?



(Testimony of Oscar Harri.)

A. Well I had to go downtown twice a week to get myself some grub.

Q. And every time you went by there on the Basin road you took a look at that line? Are you sure of that?

A. It was my business to look after the property and look after everything, and I kept my eye on that line.

Q. Was it your business to look after that line?  
[758—608] A. Yes, sir.

Q. Did you have any other business except to look after that line?

A. I had business to look after the whole property.

Q. Did the looking out after the whole property keep you so busy that you would sometime overlook that line?

(Not answered because of objections.)

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [759—609]

The defendant, to further maintain the issues on its part, introduced as a witness JOHN SOINI, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John Soini, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. Your name is John Soini? A. It is.

Q. How long, Mr. Soini, have you been around

(Testimony of John Soini.)

Juneau making it your home?

A. I first came to Juneau in 1900.

Q. In 1900?      A. Yes.

Q. What is your business?

A. I was laboring the first time I was here, my occupation now is a carpenter.

Q. Do you know Mr. H. T. Tripp?

A. Why sure, yes, I know him.

Q. Did you know Mr. Tripp in the year of 1910, John?      A. Yes, I know him before.

Q. Now, I will hand you, John, a paper here that is marked Defendant's Exhibit "C," in this case, and ask you if you know anything about that notice?

A. Yes, I know; I was with Mr. Tripp.

Q. Did you see Mr. Tripp write out this notice?

A. Yes certainly; we was the only two fellows in the Ebner bunk-house, we started out from Juneau about half past five in the morning.

Q. Mr. Tripp asked you to go up there with him?  
[760—610]

A. Yes, the day before late in the evening.

Q. Now, did you see Mr. Tripp make any copy of this notice, John?

A. Yes, sir, sure, he made a copy of it.

Q. How did he make it?

A. Had carbon paper between two copies.

Q. What did he do with the carbon copy?

A. Put it in his pocket, his copy.

Q. Now, did you go up to the Ebner dam at the time he posted it?

A. Sure, I nailed that same kind of a paper on the post myself.

(Testimony of John Soini.)

Q. On the Ebner dam? A. Yes.

Q. What date did you put up—put it on there—with reference to the date and time that Mr. Tripp wrote it out—the same day?

A. The same day, 20th of June.

Q. 1910? A. Yes, early in the morning.

Q. You are the same John Soini that is signed on there *was* a witness—your name is on the paper?

A. Yes, my name is down.

Q. As a witness? A. Yes.

Judge WINN.—That's all.

Mr. HELLENTHAL.—No cross-examination.

(WITNESS EXCUSED.) [761—611]

The defendant, to further maintain the issues on its part, recalled as a witness JOHN CARLSON, who, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John Carlson, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. Now, I *don't John*, whether I asked you this question yesterday or not; for the sake of being sure of it I will ask you now. I will ask you if you ever saw any water running through the box which you say was put in the open cut at the Ebner dam of October 4th, 1910?

A. Yes, I seen the water turned in there.

Q. When was the water turned into that box that was put in there, John, about what date?

A. October 4th, 1910.

(Testimony of John Carlson.)

Judge WINN.—That is the only question I desired to call the witness for.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You testified before, didn't you, John, that you were not there when there was any box put in, didn't you?     A. No, sir.

Q. You didn't testify to that?     A. No, sir.

Q. Didn't you testify before that you put in the headgate and that you didn't know anything about putting a box in?

A. That is the box I referred to, there was no other box there [762—612] at that time except the headgate; the headgate and the box, as I understand, that has been referred to, are the same.

Q. There was no other box on the 4th of October, except the headgate you put in?

A. Not that I know of.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Let me understand, you, John,—do you know that there was a box put in in this open cut about October 4th?

A. Yes, this box is the headgate, I understand, isn't it?

Q. You are testifying that the box is part of the headgate?     A. Why, yes.

Q. So that box was put in and the water turned through it on that date?     A. Yes.

(Testimony of Al. Black.)

Judge WINN.—That's all.

(WITNESS EXCUSED.) [763—613]

The defendant, to further maintain the issues on its part, recalled as a witness AL BLACK, who, being previously sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Al Black, for Defendant (Recalled).**

Direct Examination.

(By Judge WINN.)

Q. Al, I don't remember whether I asked you yesterday or not—when did you first see this box that was put in the open cut at the Ebner dam?

A. After we went back from the trial.

Q. You don't just remember what date that was?

A. I don't remember what date it was.

Q. Now, I will ask you whether or not there was any water running through that box when you went back up there? A. There was.

Q. Now, another question—I will ask you, Al, with respect to the new dam—after you commenced building the new dam, or the new flume, I will ask you whether or not the water was turned in that new flume before the entire flume was built?

A. Yes, it was; it was turned in and run in a ways, and then turned out again.

Q. Was or was not that sort of plan kept up right along as you constructed the new flume line of the Ebner Company? A. Yes.

Q. It was kept up? A. Yes.

(Testimony of Al. Black.)

Judge WINN.—That is the only question I desired to ask him. [764—614]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Al, you only carried that water part way, the bank wouldn't allow you to carry it all the way?

A. We turned it out where we could.

Q. You carried it probably half way to the mill site—there is a gulch there and you let it run down that gulch—is that the way of it?

A. Yes, it run down there.

Mr. HELLENTHAL.—That is all.

Judge WINN.—That's all.

(WITNESS EXCUSED.) [765—615]

Judge WINN.—I now offer the testimony of Lloyd G. Hill taken at the preliminary hearing in this case.

Mr. HELLENTHAL.—No objection.

(Whereupon said testimony was received in evidence and marked Defendant's Exhibit "B-1.") [766—616]

Judge WINN.—Will you agree that the notice set out in the answer in this case is a copy of the original notice which was posted?

Mr. HELLENTHAL.—If you have compared it and you say it is a copy I will let that be considered in evidence.

Judge WINN.—The pleadings in this case, your Honor, while the posting of this notice is perhaps admitted, there may be some question as to the time it was posted; now the pleadings—I don't know whether this—



(Testimony of Al. Black.)

Mr. HELLENTHAL.—Let the record show that I admit that John R. Winn, acting as agent for the Ebner Gold Mining Company, posted the notice to which his name is subscribed, on the date mentioned in the notice—*this* is to say, the 17th day of August, 1910, on the old Ebner dam; and let the record further show that I admit it was posted on there—on a plank or a post which stuck up above the top of the Ebner dam, and that in doing this Judge Winn was acting as the agent of the Ebner Gold Mining Company.

Judge WINN.—I offer in evidence a certified copy of the notice just referred to, which bears date of August 17, 1910, signed by the Ebner Gold Mining Company, by John R. Winn, its agent and attorney; also, I offer certificate of the recorder which is on the notice, which reads as follows: “Filed for record at 3:50, August 17, 1910, and recorded in Book 10 of Placers, page 181, G. C. Winn, District Recorder.”

(Whereupon said notice was received in evidence and marked Defendant’s Exhibit “C-1.”)

The COURT.—By consent of counsel it is agreed that the plaintiff may introduce some rebuttal testimony at this time. [767—617]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal, W. R. LINDSAY, who, having been previously duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of W. R. Lindsay, for Plaintiff (in  
Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Mr. Rufus Lindsay?

A. Yes, sir.

Q. You have been sworn as a witness before?

A. Yes, sir.

Q. Mr. Lindsay, were you on the ground at the point where the Alaska-Juneau dam is now situated on or about the 3d day of October, 1910?

A. I was.

Q. On what day were you there?

A. I was there on the 3d and 4th and 6th.

Q. Now, did you see any work done in connection with the drilling of a boulder there at the point where the dam is placed?

A. They were drilling a boulder there where the dam is now when I was up there on the 3d.

Q. Do you know where the dam was placed in the creek on the 3d of October, Mr. Lindsay,—were you there when the dam was placed in the creek on the 3d of October, 1910?

A. They were working on the dam when I was there.

Q. Where was the place where they were working on the dam while you were there with reference to the lower side line of the Lotta claim—do you know where the lower side line of the Lotta was brushed out? A. Yes. [768—618]

(Testimony of W. R. Lindsay.)

Q. You know where those stakes were?

A. Yes.

Q. Did you know at that time?

A. I did, on the 3d.

Q. You knew where the brushed-out line was?

A. On the 3d.

Q. Where was the place that the dam was put in on the 3d of October with reference to that line—it was below that line?     A. Yes, sir.

Q. Where was it with reference to the place where the dam is now—was it on the Lotta claim or off the Lotta claim?

A. It was not on the Lotta claim.

Q. Where was it with reference to the place where the dam now is?

A. It was in exactly the same place as it is now.

Q. Were you there on the morning of the 4th?

A. I was there some time during the day of the 4th; I don't remember the exact time I was there.

Q. Did you see and observe the place where the dam was at that time?     A. Yes.

Q. Where was the dam with reference to the Lotta claim—was it on or off the Lotta claim?

A. It was off the Lotta claim.

Q. Where was it with reference to the place where the dam now is?

A. Exactly the same place.

Q. Now, Mr. Lindsay, I call your attention to a photograph received in evidence as Plaintiff's Exhibit No. 3, and ask you to look at it and state if you recognize the matters and things shown in that

(Testimony of W. R. Lindsay.)

photograph. A. I do. [769—619]

Q. And whether that was the condition of things on the 4th day of October, 1910? A. Yes.

Q. Calling your attention to this photograph, can you point out to the Court the boulder on which the man was drilling on the 3d, and the boulder to which the dam was anchored on the 4th, when you saw it? Will you show the Court where those two boulders are in that picture?

A. The man was drilling at the end of the logs shown in the picture, just about at the end of the rock, the end next to the boulder.

The COURT.—Which rock, the rock here at the bottom of the picture?

A. Yes, it was on the far end of that rock; the dam was anchored between these two boulders, the two large boulders shown on the far side of the creek.

The COURT.—Mark those boulders T and U.

(Witness does so.)

Q. Now, where was the dam anchored on the opposite side of the creek—will you point to the Court behind what boulders it was anchored?

A. It was anchored against the rock marked X.

Q. Where were those rocks, Mr. Lindsay, with reference to the brushed-out line of the Lotta—the line of the Lotta was brushed out at that time, wasn't it? A. Yes, sir.

Q. Where were those boulders and where was this dam with reference to that line?

A. Below the line.

Q. Not on the Lotta as shown by that line?

(Testimony of W. R. Lindsay.)

A. Yes, sir.

Q. Now, the flume-box, that is also shown in this picture, isn't it, Mr. Lindsay? [770—620]

A. It is shown, what was left of it on that morning.

Q. Part of it had been broken up? A. Yes, sir.

Q. Where was that with reference to this brushed-out line of the Lotta?

A. It was below the brushed-out line.

Q. And not on the Lotta, as marked by that line?

A. It was not.

Q. Now, calling your attention to Plaintiff's Exhibit No. 15, another photograph, it shows the completed dam, does it not? A. Yes, sir.

Q. As it is on the ground now. I will ask you to point out to the Court, as near as you can show him, where the various rocks are that you have marked on Plaintiff's Exhibit 3 and where they appear on exhibit No. 15.

A. The one marked U is the same one marked U on the other one, exhibit No. 3, and the one marked T on exhibit No. 15 is the same as the one marked T on exhibit No. 3; the other one doesn't show on here.

Q. The water was higher when exhibit No. 15 was taken and was taken over the dam and rather obscures the dam somewhat? A. Yes.

Q. Now, you remember the time that Judge Cushman rendered his decision in this Lotta, Parish No. 2 litigation?

A. Well, I don't remember the exact date.

(Testimony of W. R. Lindsay.)

Q. Approximately?

A. I remember reading the decision.

Q. Now, at that time was there any change made in the position of the dam, under your directions?

A. No.

Q. What change was made?

A. There was a little bit of it moved I believe—the end of one [771—621] timber, a small piece of timber that stuck over the line, had nothing to do with the logs in the dam itself.

Q. The dam itself at that time, where was that with reference to that same brushed-out line of the Lotta?

(Not answered because of objection.)

Q. What was done—just explain in your own way what you did under that decision?

A. I didn't have the doing of that.

Q. What was done there—didn't you survey it?

A. No, George Jones had charge of the work.

Q. You did the surveying?

A. No, Stewart did the surveying.

Q. Do you know where the dam now is with reference to where it was before Judge Cushman's decision? A. Yes, it is in the same place.

Q. The dam itself hasn't been moved at any time since it was put in there on the 3d of October, 1910?

A. No.

Q. You were up there on the Ebner works in October, weren't you? A. Yes.

Q. 1910. What did you do up there? What time were you up there? A. On the 4th and 6th.



(Testimony of W. R. Lindsay.)

Q. When you were up there on the 4th did you observe the conditions about the vicinity of the Ebner dam?

A. Yes, the general conditions.

Q. Was there any grading done—you know where Harri had his tent that day?     A. Yes.

Q. On what claim was that?

A. On the Russell lode.

Q. The claim belonging to the Alaska-Juneau Company? [772—622]

A. Yes.

Q. How much grading had there been done between Harri's tent on that day and the Ebner dam, that you observed?     A. I didn't observe any.

Q. Did you go up to the dam?

A. I was up within 100 feet of the dam.

Q. Was the water running through the dam or over the dam at that time?

A. It was running over the dam.

Q. Was there any evidence of a dam having been cut at that time?     A. None that I could see there.

Q. What, if anything, did you observe there at the time with reference to the dam having been cut?

A. Nothing.

Q. Did you see any cut in the dam?     A. No.

Q. Was there any visible from where you were?

A. No.

Q. When were you back there the next time?

A. On the 6th.

Q. What, if anything, was going on there on the 6th—what time did you go up there on the 6th?

(Testimony of W. R. Lindsay.)

A. I went about 12:30—between 12:30 and 1 o'clock on the 6th.

Q. What did you observe then?

A. The men were cutting a hole through the dam and they were also working on the first two or three boxes of the flume.

Q. How long did you remain there?

A. I was up there a short time; I went back again at 3 o'clock on the 6th.

Q. Then what did you see?

A. There were eight or ten inches of water running through those boxes in the flume and running back in the creek again. [773—623]

Q. Two boxes had been put in there?

A. Yes, something like that; I am not certain it was two, it wasn't over three, I know.

Q. There had been some flume-boxes put in?

A. Yes.

Q. How high was the flume then with reference to the way it is now, do you know?

A. Just about the same as it is now.

Q. Do you know anything about that new board being put down?

A. No, I understand it was put down lately.

Q. You have kept notes of this so you know what you are talking about? A. I have.

(Whereupon court adjourned until 2 o'clock P. M.)

(Testimony of Eli Mackey.)

**AFTERNOON SESSION.**

July 29, 1914, 2 P. M.

Mr. HELLENTHAL.—May it please the Court, I put Mr. Lindsay on to take up the time until noon, and if counsel agrees to it and it is agreeable with the Court, I will suspend Mr. Lindsay now and call other witnesses, and complete his examination later.

Judge Winn.—I will make no objection. [774—624]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal ELI MACKEY, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Eli Mackey, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

(Through interpreter.)

Q. What is your name? A. Eli Mackey.

Q. Were you working for the Alaska-Juneau Gold Mining Company on October 3d and 4th in the year of 1910? A. Yes.

Q. Do you know where the Alaska-Juneau dam now is? A. Yes.

Q. Do you know where work was done in connection with the building of the dam on October 3d, 1910, at or near the present dam—where the present dam now is? A. Yes.

Q. Do you know where there was a brushed out

(Testimony of Eli Mackey.)

line on the 3d of October, 1910, near where the Alaska-Juneau dam is now—a brushed out line near that point?     A. Yes.

Q. Do you know where there was a rock drilled and blasted in that vicinity on the afternoon of October 3d, 1910,     A. Yes.

Q. Who drilled that rock, if you know?

A. I done it.

Q. Where was that rock with reference to the brushed out line that crossed the creek near that point, was it above it or below it? [775—625]

A. It was a little below it.

Q. Do you know where the dam was placed in the creek on the evening of that day?     A. Yes.

Q. Did you help put the dam in the creek?

A. Yes.

Q. Where was that dam placed on the evening of October 3d, with reference to that brushed out line to which you have testified—was the dam above it or below it?     A. A little below it.

Q. Was there any flume placed in the creek or near the creek in the vicinity of that dam?     A. Yes.

Q. Where was that flume and the intake to the flume with reference to the brushed out line across the creek in the vicinity of that point—above it or below it?     A. A little below that line.

Q. Did you see that dam and flume on the morning of October 4th, 1910?

A. They broke the flume that night.

Q. Did you see the broken pieces there the next morning?     A. Yes.

(Testimony of Eli Mackey.)

Q. Where was the dam and flume that morning with reference to the place where it was first put in?

A. Yes, it was in the same place.

Q. Have you seen the Alaska-Juneau dam since?

A. Yes.

Q. Where was that dam and flume placed in there on the evening of October 3d, 1910, with reference to the present dam and intake that is now on the ground? A. Same place.

Judge WINN.—You seem to answer before he gets through, don't [776—626] you, Mr. Interpreter—I would like to ask this interpreter a few questions.

The COURT.—Very well.

Q. Who do you work for?

A. Alaska-Juneau Company.

Q. How long have you been working for them?

A. About two months.

Q. What nationality is this witness? A. Finn.

Q. Are you a Finn? A. Yes.

Judge WINN.—If your Honor please, I object to this interpreter for my examination; they are both employees of the Alaska-Juneau Company, and I don't propose, if I can help it, to have interpreters of that kind interpret my cross-examination.

Mr. HELLENTHAL.—I will tell you what I will do, Judge Winn, this man speaks a little English and I will examine him in English and see if he can understand it enough to get along without the interpreter.

Q. (By Mr. HELLENTHAL.) Now, Mr. Mac-

(Testimony of Eli Mackey.)

key, I will ask you these questions in English, try and understand me; if you don't understand me say so, so I can make them a little plainer. Your name is Eli Mackey? A. Yes, sir.

Q. And you live in Juneau now? A. Yes.

Q. You know the Alaska-Juneau Gold Mining Company? A. Oh, yes.

Q. You work for them? A. Oh, yes.

Q. You worked for them in October, 1910?

A. Yes, sir. [777—627]

Q. Were you working for them on the 3d of October, 1910? A. Yes, I worked on the dam.

Q. Now, do you know where there is a brushed out line that crosses the creek near there?

A. Yes, I know that.

Q. You saw that brushed out line? A. Yes, sir.

Q. Did you see that in October, 1910?

A. Yes, sir.

Q. You know where there was a rock drilled in connection with putting a log in the dam?

A. Yes, I know that hole.

Q. You drilled the hole? A. Yes, sir.

Q. Where was that rock now, with reference to the line that crosses the creek there, that brushed out line—above it or below it?

A. Just a little below it.

Q. Do you know where the dam was put in on the 3d of October, 1910? A. Yes, sir.

Q. Now, where was that dam as you put it in there on the evening of October 3d—you worked on the dam? A. Yes.



(Testimony of Eli Mackey.)

Q. Helped put it in?      A. Yes.

Q. Where was the dam, now, that you put in on the evening of October 3d with reference to that brushed out line—was it above or below the brushed out line—can you answer that question.

A. Yes, sir.

Q. Where was it, above or below the brushed out line? [778—628]      A. Below.

Q. Where was the flume that you put in on the evening of October 3d—was that above or below the brushed out line?      A. Below.

Q. Where was the intake to the flume that you put in that evening—above or below the brushed out line?      A. Below.

Q. Did you see that dam and flume on October 4th, the next day?

A. No, they broke the flume October 4th.

Q. Were the pieces of flume that were broken—you saw those?      A. Yes.

Q. Where were they with reference to the box that was there the evening before—in the same place or somewhere else?      A. Yes, same place.

Q. Where was the dam, in the same place?

A. Yes.

Q. Did you see the dam lately—you know where the Alaska-Juneau dam is now?      A. Oh, yes.

Q. Where was the dam as you put it in on the evening of October 3d with reference to the place where the dam is now—do you understand what I mean by that?      A. Yes.

Q. The dam that you put in on October 3d, was in

(Testimony of Eli Mackey.)

the same place, or some other place, than the dam that is in there at present is?     A. Same place.

Mr. HELLENTHAL.—You may cross-examine.  
[779—629]

Cross-examination.

(By Judge WINN.)

Q. What time did you go up to this place on October 3d, in Gold Creek?     A. What time?

Q. What time of the day?

A. I guess it was 9 o'clock.

Q. 9 o'clock in the forenoon?     A. Yes.

Q. In the morning?     A. Yes, morning.

Q. Who went with you?

A. Mr. Henderson and Mr. Kinzie.

Q. Mr. Kinzie and who?

A. Mr. Henderson and Mr. Kinzie.

Q. What were you doing down there, drilling on this rock?     A. Built the flume.

Q. What were you drilling on the rock for—to bolt the logs to?     A. Yes, sir.

Q. How much brush was there cut out around there when you went to work on this rock—how much brush was there cut out?

A. Not very much, a little piece.

Q. Just a little narrow piece of brush cut out?

A. Yes.

Q. That was cut out right where this rock that you were blasting on was?     A. Yes.

Q. So the rock that you were going to blast was in the bed of the creek, down in the creek?

A. Yes, in the creek.

(Testimony of Eli Mackey.)

Q. There was just a little brush cut out around that place? [780—630]      A. Yes.

Q. There wasn't any brush cut out in the hill above—just a little cut out where you were working on that rock?      A. Yes, sir.

Q. Did you see Kinzie and his people put in a piece of flume in the creek on the 3d?      A. Yes.

Q. On the 3d?      A. Yes.

Q. The 3d is the first time that you went up there?      A. Yes, sir; first time.

Q. What was done with the piece of flume that Kinzie put in on the 3d?      A. What time?

Q. When did he put it in on the 3d?

A. I don't know.

Q. You say you saw him put it in?

A. I don't know.

Q. Did you see him?

A. Yes, I seen him.

Q. Was it in the afternoon or the forenoon?

A. Afternoon he put in that flume.

Q. Well, what time, did you see a piece of flume put in Gold Creek up there on the day of the 3d?

A. Yes.

Q. Who put that in?

A. Most of the men there, six or seven men.

Q. What was done with that piece of flume that was put in on the 3d—what became of it—what was done with that piece of flume—did it stay in there?

A. Yes, it stayed there all right.

Q. What time on the 3d was it put in, the forenoon or afternoon? [781—631]

(Testimony of Eli Mackey.)

A. Afternoon.

Q. What time in the afternoon?

A. I don't remember what time.

Q. Was it dark or light?

A. A little bit dark.

Q. After you ate supper?      A. Yes, sir.

Q. After you ate the third meal that day?

A. Yes.

Q. Was there any other piece of flume put in that day before you ate your third meal?      A. No.

Q. None put in?      A. No.

Q. Now, you put this piece of flume in—where was that put in with reference to the rock that you were drilling on; was it put in above the rock or below the rock?      A. Below the rock.

Q. Is that the one that was smashed up?

A. Yes.

Q. Don't you know that there was one put in in the afternoon of the 3d between your dinner-time and your supper-time?      A. Afternoon?

Q. Yes, one put in between your dinner-time and your supper-time, wasn't there?

A. After supper?

Q. Wasn't there a piece of flume put in between your second and third meal on the 3d?

A. Third?

Q. What was done with that piece of flume?

A. That was in the water.

Q. Was that broken up? [782—632]

A. Yes.

Q. I will ask you, did you see two pieces of flume

(Testimony of Eli Mackey.)

put in Gold Creek on the day of the 3d of October, or just one piece put in?     A. One.

Q. And that was put in only one time?

A. Yes, only one time they put it in.

Q. Only one time?     A. Yes.

Q. And was that between your second and your third meal, or after your third meal?     A. After.

Q. There wasn't any flume then put in between your second meal and your third meal that day, was there?     A. The first flume?

Q. Well, then you did put in some flume or piece of flume between the second and third meal, and then you put in another one after the third meal on the 3d day of October, all in one day?

A. Yes, all in one day.

Q. Were you up there in the evening after your third meal after it was getting dark?     A. Yes.

Q. They put in one piece then?     A. Yes.

Q. Did you see two logs across the creek?

A. Yes.

Q. Two logs?     A. Yes.

Q. Where was the flume that was put in the creek put in, above or below—     A. Below.

Q. Below the logs? [783—633]     A. Yes.

Q. Now, the logs that were there just two ordinary logs?     A. Two little logs.

Q. Not very big?     A. No, not very big.

Q. Was the flume tied with a rope fastened on to the logs?     A. Yes.

Q. That was the way it was done?     A. Yes.

Q. Was there any rock put inside of the dam?

(Testimony of Eli Mackey.)

A. Yes, inside.

Q. The flume was put right in between two rocks?

A. Yes, sir.

Q. Then what was the flume tied to, was it tied to something?

A. The flume, the rock was right in the flume.

Q. Now, where those two logs lay across the creek, was it brushed out there? A. Yes.

Q. Just a little around there? A. Yes.

Q. Was it brushed out, way up across the hill?

A. Oh, yes.

Q. How far? A. Oh, I don't know how far.

Q. Did you go up the hill to see?

A. I see a line there.

Q. What made that line?

A. I don't know who made it.

Q. Do you know when it was made?

A. Mr. Kinzie told me.

Q. Did you see any men making that trail?

A. No, I didn't see that.

Q. The brush that you saw cut around where your logs were and [784—634] where you say you drilled the rock was cut before you went up there on the 3d—it was cut when you got up there, it was all done? A. I don't understand.

Q. Did you see any man on the 3d take his axe and cut down bushes? A. Up the hill?

Q. Anyone there? A. Oh, yes.

Q. Who cut brush on the 3d, who had an axe?

A. That Hill with the Ebner men had lots of rocks down the creek.



(Testimony of Eli Mackey.)

Q. What men of your men cut brush on the 3d?

A. Arthur Krasul.

Q. You went up there with Mr. Kinzie and Henderson—now, that was three men, name some other man who went up there that day?

A. Lots of men.

Q. How many?

A. Six or seven altogether.

Q. Some of the men that went up with you and Mr. Kinzie had axes?     A. Yes.

Q. They cut some brush with the axes around where you were working on this rock and where the logs were put in?     A. Yes.

Q. Do you know Mr. Harri, the lame man?

A. Oh, yes.

Q. Was Mr. Harri up there that day?

A. No, I didn't see him; I worked down the creek all day.

Q. You didn't see Harri that day?     A. No.

Q. How late, what hour did you leave there that night, do you know? Do you know what time you left, what time you come [785—635] down, left the work?     A. I guess 9 o'clock.

Q. You went back up there on the 4th, the next day?     A. I didn't go back.

Q. You didn't go back?     A. No.

Q. When did you go back again?

A. I worked in the tunnel.

Q. When did you next, after the 3d, go back up where these logs were where you were drilling on the rocks—when next did you go back, do you remem-

(Testimony of Eli Mackey.)

ber? A. No, I don't.

Q. Did you go back before Christmas that year?

A. Oh, yes; oh, yes.

Q. Back up to where these logs were? A. Yes.

Q. And where that rock was? A. Yes.

Q. About how long after October 3d, a month?

A. I was around here a couple of months, I worked in that tunnel.

Q. When did you go back up Gold Creek, back up to where these logs were put across the creek on the 3d and where you drilled in the rock—when did you go back to that place in Gold Creek, do you remember how long after the 3d of October?

A. I don't remember.

Q. You were working on down the creek?

A. Yes.

Q. On a tunnel? A. Yes.

Q. For the Alaska-Juneau Company?

A. Yes. [786—636]

Q. When you got through on the tunnel where did you go then—when you quit working on the tunnel, where did you go?

A. Oh, I worked there about two months.

Q. Did you go up to where the logs were and where the rocks were that you did the drilling on in those two months? A. Yes.

Q. About how many weeks after the 3d?

A. I don't remember that.

Q. Then after you worked two months up there you went to work for Mr. Kinzie over across Gastineau Channel—how long did you work for Mr.

(Testimony of Eli Mackey.)

Kinzie, only two months?

A. Oh, I worked a long time.

Q. Working for him now?

A. Yes, I work now.

Q. When did you quit working for Mr. Kinzie, have you been fishing?

A. Yes, I have been fishing this summer; didn't work this summer.

Q. Did you work last winter for him?

A. Last summer.

Q. You have been fishing this summer?

A. Yes.

Q. You worked for him last winter?

A. Yes, I worked last summer for Mr. Kinzie.

Q. Not this summer? A. No.

Q. Where did you work then, over across at Treadwell? A. No, in the Basin.

Judge WINN.—That is all. [787—637]

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. That day, October 3d, you know when I mean—now, did you put in one flume-box or two flume-boxes? A. One.

Q. Only one? A. Only one.

Q. Did you put that in in the afternoon or in the evening? A. Evening.

Q. Did you put in any flume-box in the afternoon?

A. In the evening.

Q. Only one in the evening? A. Yes.

Q. Now, on the morning of October 4th, you didn't go back to work there? A. No.

(Testimony of Eli Mackey.)

Q. Did you see the dam that morning?

A. Yes, I saw that box was broke.

Q. You saw it?      A. Yes.

Q. You didn't work there, you worked at the tunnel?      A. Yes.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [788—638]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal JOHN B. MARSHALL, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of John B. Marshall, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Have you been sworn, Mr. Marshall?

A. Yes, sir.

Q. You are the United States Commissioner for the Juneau Recording District?      A. Yes, sir.

Q. And as such you are also the Recorder?

A. Yes.

Q. And the Recorder for the Harris Mining District?      A. Yes, sir.

Q. As such official, have you in your possession and your custody the records of the Harris Mining District?      A. Yes.

Q. I hand you here a small book labeled as the minute book of the Harris Mining District—

A. August 1881 to February, 1888.

(Testimony of John B. Marshall.)

Q. Is that one of the records in your custody and control? A. Yes, sir.

Q. And that is one of the records of the District?

A. It is in my possession as such.

Q. Does that contain the minutes of the organization of the Harris Mining District?

A. It contains the minutes of the Harris Mining District. [789—639]

Q. It contains that portion of them relating to the organization of the District? A. Yes, sir.

Mr. HELLENTHAL.—I will first offer in evidence, you Honor, that portion of the record relating to the organization of the Harris Mining District, commencing on what page, Mr. Marshall, and continuing how far?

A. The first page is not numbered, but would be one; it is followed by 2, 3 and so on.

Q. How far Mr. Marshall, does the book relate to the organization of the District?

A. I think that it is from pages 1 to 11.

Q. From pages 1 to 11? A. Yes, sir.

Mr. HELLENTHAL.—I will offer in evidence first pages 1 to 11 of the book referred to.

The WITNESS.—I think that I will have to revise the statement I made in regard to that; those are not the minutes just at that particular place—the meeting being called to order—it appeared to be the minutes, and I thought probably it was, but that is not true; I hadn't examined this book carefully before coming up here to testify to the different portions of it, but it contains here at places what

(Testimony of John B. Marshall.)

purports to be the miners' rules and minutes of proceedings.

Mr. HELLENTHAL.—I will make the offer this way and then it can be segregated afterwards—I offer that portion of the book that relates to the organization of the District.

(Not received in that form because of objection.)

Q. Mr. Marshall, you have testified, I think, that you have in your custody the minutes of the Harris Mining District relating to the organization of the District? A. Yes, sir. [790—640]

Q. Will you describe the book in which that is found, and the page on which those minutes occur?

A. It is found in a book which is labeled, 1880—1881, on the next line A, and the label further says “No. 1, Lode Claims, Placer Claims, Water Claims,” and then there is other writing on there which is not legible.

Q. It is not legible?

A. It is not legible; and on page — it is not numbered in the regular way, but bears O, or what apparently are the rules of the organization of the Harris Mining District.

Mr. HELLENTHAL.—I will offer in evidence the minutes of this organization to which the witness has just testified, appearing on this first page of the book previously described by the witness.

Judge WINN.—I want to cross-examine him and then I will make my objection.

The COURT.—Very well, Judge, cross-examine.

Q. (By Judge WINN.) Mr. Marshall, you have



(Testimony of John B. Marshall.)

been appointed United States Commissioner and ex-officio recorder of the Juneau precinct, have you not?

A. They call it a recording district, I think it is designated as a recording district.

Q. It is one of the recording districts that is in the First Judicial Division of Alaska?

A. Yes, sir.

Q. And there is a provision made under the law for the appointment of such an officer, is there not?

A. Yes, sir.

Q. Now, Mr. Marshall, when you say you are the recorder of the Harris Mining District, do you know of the existence of any such organization as the miners of the Harris Mining District?

A. Not to my knowledge. [791—641]

Q. You never have been appointed by any such organization as recorder, have you? A. No, sir.

Q. Never been elected by any such organization as such officer? A. No, sir.

Q. You never have attended any meeting of such an organization, have you? A. No, sir.

Q. You found these records that you are testifying concerning now in the office of the recorder of the Juneau precinct, is that the name of the District?

A. I think the designation is District Recorder; I am the United States Commissioner of the Juneau precinct.

Q. And ex-officio recorder?

A. Ex-officio recorder.

Q. That precinct includes a certain part of the First Judicial Division of Alaska, doesn't it?

(Testimony of John B. Marshall.)

A. Yes, sir.

Q. Includes Juneau and vicinity? A. Yes, sir.

Q. And you found this book that you are testifying concerning among the records of this office that you are testifying about? A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—Let me ask Mr. Marshall a question or two about that. Mr. Marshall, the Juneau Recording District includes within its boundaries the Harris Mining District?

A. As the Harris Mining District is established in that record, yes.

Q. It includes it within its boundaries?

A. Yes, sir. [792—642]

Q. And you are the recorder in whose office is recorded at the present time all the mining claims, water locations, and things of that character in the Harris Mining District? A. Yes, sir.

Q. And have been for some time past?

A. Yes, sir.

Q. And as such recorder you now have in your custody the records of that district? A. Yes, sir.

Q. Now, the Harris Mining District is here described, isn't it?

(Not answered because of objection.)

Q. And as such custodian of those records and as such recorder you have those records in your custody? A. I have.

Q. (By Judge WINN.) You claim that the Harris Mining District boundary lines are coextensive with the boundary lines of the Juneau Recording District?

(Testimony of John B. Marshall.)

A. No, sir; the Juneau boundary lines are much more extensive—that is, they extend farther north, farther east and farther west.

Q. (By Judge WINN.) You don't know anything about how those books happened to be in your vault? A. I have no idea.

Q. (By Judge WINN.) You found them in there? A. Yes.

Q. (By Judge WINN.) They were not turned over to you by any organization of miners, or any officers or people belonging to any such organization?

A. No, sir; they were turned over to me by my predecessor in office. [793—643]

(Questions by the COURT.)

Q. Mr. Marshall, when were you appointed United States Commissioner?

A. July 1st a year ago—that is, I took office at that time; I don't remember the exact date of the appointment.

Q. When did you first come to Juneau?

A. I first came to remain here permanently in July, three years ago.

Q. Who made you the custodian of the records of the mining district—of any mining district?

A. Well, the records were delivered to me by virtue of my appointment to the office.

Q. I didn't ask you who delivered them—who made you the custodian of the records of any mining district?

A. No individual that I know of, or no authority acting at that time.

(Testimony of John B. Marshall.)

(Whereupon said minutes were admitted on the promise of counsel to connect them up, and said minutes were read into the record as follows:

“Harris District.

At a meeting of the miners the discoverers of the Harris District, Discovered on October 4th, 1880, situated in Alaska Terry. about 8 miles North of the Taku River.

The following local laws were adopted by us in the absence of civil or territorial law for the purpose of mining said district consisting of Gold and Silver Gravel Mines and quartz lodes, the quartz lodes situated on Gold Hill emptying into Silver Bow Basin main land and coast range about 4 miles from salt water, and also for quartz mill sites.

Boundary lines of said district, the mouth of the Taku River on salt water to a river named Salmon river north, [794—644] and thence running inland fifteen miles along the coast range, the whole consisting of three large creeks or rivers, north of the Taku River, the first named Sheep Creek, middle or center creek named Gold Creek, and the third named Salmon River, and all their tributaries; the middle creek or river named Gold Creek is our discovery and field of operations.”)

Q. Now, Mr. Marshall, among the records of your office also is another book to which I first directed your attention, called “Minute-Book, Mining District, 1881 to 1888”? A. Yes.

Q. That minute-book contains the rules pertain-

(Testimony of John B. Marshall.)

ing to the appropriation of water within the Harris Mining District? A. Yes.

Q. What pages bear upon that question?

A. Pages 38 to and including the first three lines on page 43.

Mr. HELLENTHAL.—I now offer in evidence, your Honor, the part of this book to which the witness has just referred, relating to the rules of the Harris Mining District covering the appropriation of water.

The COURT.—They will be admitted subject to the promise to connect them up.

(Whereupon said minutes were read into the record as per exhibit No. 30.)

Mr. HELLENTHAL.—That is all.

Judge WINN.—That is all.

(Witness excused.) [795—645]

## MORNING SESSION.

July 31, 1914, 10 A. M.

The plaintiff, to further maintain the issues on its part, introduced as a witness CHARLES WELLS, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

### Testimony of Charles Wells, for Plaintiff.

#### Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Charles Wells? A. Yes, sir.

Q. When did you come to Alaska, Mr. Wells?

A. The fall of 1880.

(Testimony of Charles Wells.)

Q. When did you come to the Harris Mining District?     A. 1881.

Q. Do you know where the Harris Mining District is?     A. Yes, sir.

Q. Were you here when the Harris Mining District was organized?     A. No, I was in Sitka.

Q. Had you been here before that?

A. I had been here before that, yes.

Q. Do you remember the time it was organized?

A. Yes, sir; I remember the time.

Q. Do you know who the first recorder of the district was?     A. Yes, sir.

Q. Who was it, Mr. Wells?

A. Colonel Dixon.

Q. How long was he the recorder?

A. I think he was the recorder up to the time—

Q. Mr. Wells, I hand you here a little pamphlet marked “Local Mining Laws of Harris Mining District,” and ask you to look at that and see if you recognize that? [796—646]

A. Yes, I recognize it and recognize all the people’s names there.

Q. Now, Mr. Wells, do you remember a meeting of the miners of the Harris Mining District in about 1888 when some action was taken looking towards the designation of the United States Commissioner as the mining recorder?     A. In 1888?

Q. About 1888.

A. Yes, sir; I was at that meeting myself.

Q. You were at that meeting?     A. Yes.

Q. Now, I will ask you the question, Mr. Wells,



(Testimony of Charles Wells.)

what action was taken by the miners of the—that was a regular miners' meeting, was it?

A. Yes, sir.

Q. Called by the miners of the district?

A. Yes.

Q. At that meeting what, if any action was taken by the miners, in your presence, looking towards the designation of the United States Commissioner as the mining recorder?

(Not answered because of objection.)

Q. Do you know, Mr. Wells, whether there was any record kept of that meeting as far as you know?

A. No, I don't.

Q. You don't know? A. No.

Q. Do you know what action was taken by the miners at that time? A. Yes, sir.

Q. Now, I will repeat the question as before.

A. Well, the meeting was for the purpose of seeing whether they would have two recorders or not, and come to the conclusion that there wasn't enough in it for both of them, and they made [797—647] up their minds that they would have to go to the commissioner's office anyhow for the other records, and they might just as well let the commissioner have it and that would pay him a pretty good salary.

Q. Now, Mr. Wells, at that meeting what, if any action was taken by which the commissioner was in the future designated as the recorder of the district?

A. He was designated as the recorder of the Harris Mining District.

Q. Not only the commissioner who was then in

(Testimony of Charles Wells.)

office, but for all future years?

(Not answered because of objection.)

Q. What was the action taken with reference to who should be the recorder of the Harris Mining District in future years? A. The commissioner.

Q. The United States Commissioner? A. Yes.

Q. And how was that to be done, without any further elections or with further elections?

(Not answered because of objection.)

Q. Under the action taken by the miners what, if any, action would be necessary to make him the recorder for future years?

(Not answered because of objection.)

Q. Now, Mr. Wells, pursuant to the steps taken at that meeting concerning which you have testified, what was done with the records of the Harris Mining District—to whom, if anyone, were they turned over—do you know?

A. All my work I had done with the commissioner from then on.

Q. Did you see the records in the commissioner's office after that?

A. Yes, sir; I went there and had recorded myself lots of times affidavits of labor and things of that kind.

Q. Do you remember, Mr. Wells, the safe that was kept by the [798—648] miners at that time?

A. Yes, I helped to pay for that.

Q. What happened to that safe?

A. It was burned at the time the courthouse was burned.

(Testimony of Charles Wells.)

Q. What was done with it after that meeting?

A. It was turned over to the commissioner.

Q. And the records were kept in this safe by the commissioner? A. Yes.

Q. And that safe was kept, I understand, in the possession of the commissioner until the fire here, when it was burned up? A. Yes, sir.

Q. Now, Mr. Wells, certain laws of the Harris Mining District have been introduced here—you knew Judge Delaney in his lifetime? A. I did.

Q. Do you know, Mr. Wells, whether the miners of the Harris Mining District took any action toward the enactment of rules governing the appropriation of water in about the year of '81 or '82?

A. Yes, sir.

Q. Did they take any action governing the appropriation of water? A. Yes, sir.

Q. Now, Mr. Wells, I hand you here—did you know Judge Delaney in his lifetime?

A. I did, in his lifetime.

Q. What was he *going* here?

A. First customs-house collector and judge of the District Court.

Q. Afterwards what business did he follow?

A. Law.

Q. Practiced law? A. Yes. [799—649]

Q. Did you know Mr. W. R. Hoyt? A. Yes.

Q. What was his business?

A. He was the commissioner.

Q. Also recorder? A. Yes, sir.

Q. Do you think you would know his signature if

(Testimony of Charles Wells.)

you saw it? A. I am not sure I would.

Q. Showing you this pamphlet, you *don't whether* that is Mr. Hoyt's signature or not? (Referring to Plaintiff's Exhibit No. 33.) A. I couldn't say.

Q. Calling your attention now, Mr. Wells, to that portion of the little pamphlet I am handing you, marked on the outside "Local Mining Laws of the Harris Mining District," and calling your attention commencing at a point on the 4th page of that little book and continuing up to the 5th and 6th page, I will ask you to look at this, Mr. Wells,—Now, I will ask you whether the laws and rules I have just called your attention to as shown in that little book, how they compare with the laws and rules enacted by the miners of the Harris Mining District in 1881 and '2—whether they are the same?

A. Just about the same now as they were then.

Q. The question was, Mr. Wells, whether those are the same as the laws which were originally enacted? A. Yes, sir.

Q. As shown in this little book? A. Yes, sir.

Q. I call your attention now, Mr. Wells, to the record book that has been offered in evidence, same being the records of the Harris Mining District. I now call your attention to the minute-book of the Harris Mining District, commencing at [800—650] page 38 to the top of page 43, and ask you to look at that and state whether you know if that contains the laws governing the appropriation of water as adopted by the miners of the Harris Mining District?

(Testimony of Charles Wells.)

(Not answered because of objection.)

Q. Mr. Wells, are you familiar with the rules of the Harris Mining District as they were adopted in 1881 and '82 by the miners of that district?

A. Yes, sir.

Q. Governing the appropriation of water?

A. Yes, sir.

Q. Now, calling your attention to the rules as they appear in the minute-book of the Harris Mining District, marked August, 1881, to February, 1888—calling your attention to those rules as they appear on pages 38, 39, 40, 41, 42 and part of 43 of that book, I now ask you how those compare with the rules as they were in existence and adopted and observed by the miners at that time?

(Not answered because of objection.)

Q. Do you know, Mr. Wells, what rules were adopted and what laws were in force at that time, 1881 and '82, by the miners of the Harris Mining District? A. I do.

Mr. HELLENTHAL.—Now, I will have these rules read into the record—I mean the rules from page 38 to the top of page 43 of the Minute-book of the Harris Mining District, August, 1881, to February, 1888, being Plaintiff's Exhibit No. 30.

Judge WINN.—This is read into the record subject to my objection.

(Whereupon said rules were read as follows:)

“Harris Mining District, Feb. 18, 1882.

An adjourned meeting of the miners of this District was held in the house of Wm. Newcomer @



2 o'clock P. M. Minutes of the meeting of Feb. 8th read and approved. Committee appointed at the previous meeting [801—651] to report amendments to the present code of laws governing water rights, etc., made the following reports: Majority report. We, the undersigned committee, appointed by the chairman, (Mr. T. A. Willson) of the annual meeting of the miners of Harris Mining District for the purpose of draughting amendments to the present mining laws of the District, to report to an adjourned meeting to be held at the residence of W. H. Newcomer on the 18th February, 1882, have the honor to respectfully submit the following for ratification:

Article 1st. Section 1st. The right to use the running water flowing in a river or stream or down a cañon or ravine, may be acquired by appropriation.

Article 2nd. The appropriation must be for some useful or beneficial purpose and when the appropriators or his successor in interest ceases to use it for such a purpose, the right ceases.

Article 3rd. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe or aqueduct by which the diversion is made to places beyond that where the first use was made.

Article 4th. The water appropriated may be turned into the channel of another stream and mingled with its water and then reclaimed, but in reclaiming it the water already appropriated by



another must not be diminished.

Article 5th. As between appropriators, the one first in time is the one first in right.

Article 6th. A person desiring to appropriate water must post a notice in writing, in a conspicuous place at the point of intended diversion, stating therein:

First: He claims the water there flowing to the extent of (giving the number) inches, measured under a four inch pressure. [802—652]

Second: The purpose for which he claims it and the place of intended use.

A copy of the notice must within ten (10) days after it is posted, be recorded in the Books kept by the Recorder of the District.

Article 7th. Within twenty days during the working season after the notice is posted the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently, and uninterruptedly to completion, unless temporarily interrupted by rain or snow.

Article 8th. By “completion,” it is meant conducting the *the* waters to the place of intended use.

Article 9th. By a compliance with the above rules, the claimant’s right to the use of the water relates back to the time the notice was posted.

Article 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.

Article 11th. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must after this title takes effect and within twenty days thereafter proceed as in this title provided, or their right ceases."

Mr. HELLENTHAL.—I will now introduce the other pages of this record that was omitted previously, the action taken upon this report of the Committee that has just been read.

(Whereupon pages 44, 45 and part of 46 of the minute-book were read in evidence as follows:)

"It was moved that the reports of the committee be considered by sections, carried.

The majority report was then taken up. [803—653]

Section 1st. Articles First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Eleventh were adopted as read. Article Sixth was amended so as to read "six-inch pressure" instead of four-inch pressure.

Section 2d. Articles First and Second were adopted as read. Article Third was amended by adding "and the Recorder when serving shall receive the same pay as arbitrators."

The minority report was then taken up and the following adopted as Article 12 of Section 1st of the Amendments:

"When a party has a prior location to a ditch, he is entitled to protection on said ditch, to prohibit

(Testimony of Charles Wells.)

parties from injuring said ditch by dumping tailings.

On motion the reports adopted as a whole, as amended.

On motion, meeting adjourned.

R. T. HARRIS, Secretary.

T. A. WILLSON, Chairman."

Q. Now, Mr. Wells, let me ask you a couple more preliminary questions. What business have you followed since coming to Alaska? A. Mining.

Q. In the same District, Harris Mining District?

A. Yes, sir.

Q. You are the man that located the group of claims that is now referred to as the Ebner group?

A. Yes, sir.

Q. You located those claims in what year?

A. On the 6th day of December, 1880.

Q. 1880? A. Yes.

Q. And you have been locating and operating mines here ever since? A. Yes, sir.

Q. Now, you have heard the rules governing the appropriation of [804—654] water as shown by the minute-book of the Harris Mining District as read in evidence? A. Yes, sir.

Q. Do you know whether those rules were generally observed by the miners of the Harris Mining District, commencing immediately after their passage? A. Yes, I know them well.

Q. Do you know whether they were observed?

A. Yes, I do.

Q. Were they or were they not generally observed by the miners of the Harris Mining District?

(Testimony of Charles Wells.)

A. They were.

Q. Do you know whether those rules as read in evidence and as adopted and observed have been generally observed by the miners from that time ever since to the present time—the first question is whether you know or not? A. I do.

Q. Now, Mr. Wells, were they so generally observed by the miners of the Harris Mining District from the time of the first enactment up to the present time?

A. They were, so far as my knowledge goes; I observed them myself and everybody else I know observed them.

Q. Was there ever any action taken by the miners of the Harris Mining District in anywise changing or modifying the laws as just read in evidence?

A. The Harris Mining District?

Q. Yes. The information I am trying to elicit is whether the miners ever modified or changed these rules? A. Not to my knowledge.

Q. Was there ever any change made by the miners of the district in these rules?

A. Not to my knowledge.

Q. Are you familiar with the customs of the district as well as [805—655] the rules? A. Yes.

Q. Are there any customs in the Harris Mining District that are observed by the miners that are in conflict with these rules, that are different from the rules?

(Objection and question withdrawn.)

Q. Mr. Wells, has there ever been, in the Harris

(Testimony of Charles Wells.)

Mining District since the enactment of these rules up to the present time, any custom among the miners that was observed by the miners of the district under which an appropriation of water could be made so as to date back to the time of the notice—any other manner except by following these rules?

(Not answered because of objection.)

Q. I call your attention, Mr. Wells, to a little pamphlet, marked on the outside "Local Mining Laws of Harris Mining District, Alaska, Published by John G. Heid and G. W. Garside, Juneau, Alaska." I will ask you if you have seen that pamphlet before or a similar pamphlet? (Referring to Plaintiff's Exhibit No. 34 for identification.)

A. I don't think I have.

Q. Don't remember that one; do you remember seeing pamphlets of a like character?

A. I seen something similar to it, but not the same.

Q. Can you say whether these pamphlets were in the hands of the miners about the territory?

A. Yes.

(Answer stricken and objection to question sustained.)

Q. I hand you another pamphlet, called the "Local Mining Laws of the Harris Mining District, Alaska," and ask you to look at that. (Referring to Plaintiff's Exhibit No. 33 for identification.)

A. Yes, I have seen that.

Q. Have you seen copies of that pamphlet in general use among [806—656] the miners?

(Not answered because of objection.)



(Testimony of Charles Wells.)

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. When did you say, Charlie, that you first came to Alaska?     A. When did I first come to Alaska?

Q. Yes.     A. Seventy-four.

Q. When did you first come to Juneau and vicinity?     A. Fall of eighty.

Q. Fall of 1880?     A. Yes.

Q. When was the first meeting that you attended of this so-called Miners' Organization?     A. 1888.

Q. 1888?     A. Yes.

Q. They had been having meetings prior to that time you didn't attend?

A. Yes, I was in Sitka; I left here, I think, the 8th or 9th of December and went back to Sitka, in the fall of '80.

Q. How many meetings of this so-called organization did you attend yourself?

A. That is all I attended.

Q. One in 1888?     A. Yes.

Q. You have been living in and about Juneau and vicinity since '88?

A. Yes, I have been living here since the 4th of April, 1881. [807—657]

Q. I want to confine it to this particular meeting that you attended. Where was this meeting held that you attended?

A. Well, now, that I cannot say; there was three places here they held meetings, and whether it was down there in what they called the Levy building,



(Testimony of Charles Wells.)

or over here at Joe Swan's—that vacant lot now right in front of the Odd Fellow's hall, on this side—or whether it was in the opera house, I cannot say.

Q. You remember attending a meeting at that time but you don't know where it was held?

A. No—that is, I cannot tell exactly where it was held; they were held all over then wherever they could get a room.

Q. I want you to designate the building and where it was, if you can remember?

A. I cannot exactly say where it was.

Q. How many people were present at that meeting?

A. Oh, I suppose there was a hundred, somewhere around that.

Q. Was there any meeting ever called after that meeting of the miners of this so-called organization?

A. Not that I know of, not for that purpose.

Q. Did that organization that you attended then have any record-books? A. That I couldn't say.

Q. Did they have any secretary, or such officer at that meeting?

A. Yes, there was a secretary there.

Q. Have you ever looked over the books that have been offered in evidence in this case, which purport to be the minutes and records of this organization—have you read through them?

A. I have through this little pamphlet.

Q. I don't mean the pamphlet; I mean the record-books that have been identified here from which Mr. Hellenthal read? A. Only when it was read to me.

(Testimony of Charles Wells.)

Q. Do you know whether or not there was any record made of anything [808—658] that transpired at that meeting of '88?

A. That I couldn't say.

Q. Is that the meeting that you stated to Mr. Helenthal that certain proceedings were had at that time?

A. That was the meeting that the miners made up their minds that there wouldn't be two recorders.

Q. Now, there was no record ever made of any resolution having been passed? A. What is that?

Q. No record was made of anything that was ever done at that meeting, was there?

A. I don't know if it was put on record or not; the records were in that safe and the courthouse was burned down.

Q. You never did see any written record that was made at this meeting, did you?

A. No, I didn't see it.

Q. Who was acting as president or chairman of that meeting, and who was acting as secretary?

A. It is pretty hard for me to tell; it was a long time ago.

Q. You don't know? A. No, I don't.

Q. Who made any motion there at that time, Charley? A. I think Mr. McGlinchy was one.

Q. Who? A. Mr. McGlinchy.

Q. Have you ever seen any record of any motion that Mr. McGlinchy made?

A. No, only in that little pamphlet.

Q. I mean in the Juneau records.

(Testimony of Charles Wells.)

A. No, not from the records.

Q. You don't know whether there is any record in these books, or not, of the 1888 meeting? [809—659]

A. I couldn't say.

Q. Who else made a motion?

A. His motion was adopted.

Q. You don't remember who the secretary was?

A. No, I don't know whether it was Willson, or who it was.

Q. Now, I wish you would state just the exact language in which this motion was made in 1888—the language he stated his motion in?

A. He moved and somebody seconded that they would vote for one recorder in place of two, that there wasn't enough money in it for two, and it would pay one.

Q. Had you been paying one prior to that time?

A. Yes, sir; we had to pay one—that is, every time we would go to the office we had to pay for it.

Q. You have stated that motion as well as you remember it, Charley, have you?      A. Yes.

Q. Who was the United States Commissioner at that time?      A. '88—I think it was Mr. Hoyt.

Q. Did you ever pay him anything for acting as recorder?      A. Yes, I have.

Q. How much a month did you pay him?

A. I didn't pay him by the month; I paid him for my work; whenever I had anything recorded I paid him.

Q. You paid the recording fees?      A. Yes, sir.

Q. That was the United States Commissioner that

(Testimony of Charles Wells.)

had been appointed under the civil law as it had been extended to Alaska?     A. Yes.

Q. And you paid the recording fees to him?

A. Yes—affidavits of labor—

Q. You paid him just like you would pay a United States Commissioner, didn't you—there was no difference? [810—660]     A. For recording claims.

Q. The same as paying for recording deeds—

A. Just the same.

Q. Or any other papers that were going on record with the United States Commissioner?

A. Yes, I suppose it was the same.

Q. How many location notices did you ever record of your own with this Recorder Hoyt?

A. How many location notices?

Q. Yes, of your own.     A. Water?

Q. Yes.     A. One.

Q. When was that—about what date did you record a location notice?

A. Down on the Snettisham Peninsula.

Q. That was a location notice of water down on Snettisham peninsula?

A. Yes, sir; out of the Harris Mining District.

Q. Outside of what you understood to be the Harris Mining District?     A. Yes, sir.

Q. What date was that, approximately; what date approximately did you make any such record of a notice?

A. I couldn't say, now, Judge, what date it was; I think you will find it on record here.

(Testimony of Charles Wells.)

Q. That is the only location of water that you ever made?

A. I have helped Mr. — to make another one up here on the Ebner property.

Q. Did you ever make another water location notice in your own name since the one you have just stated you made? A. Not in my own name.

Q. Since 1888 you have made one water location, and then that was outside of the Harris Mining District as you contend? [811—661] A. Yes.

Q. And you filed that water location notice that didn't have any date upon it—you don't know what time you filed it or what time you posted it?

A. It had a date on it.

Q. You think it had a date and a date of posting?

A. Yes, you will find it in the records; Judge Delaney made out the notice.

Q. Was it before 1888 or after that you recorded that notice? A. It was after.

Q. Now, I understand you to say that you have only made one water location notice in your own name? A. That is all.

Q. Since '88? A. Since '88.

Q. And that is all. A. That is all.

Q. How many did you make prior to '88?

A. I helped my partner to make two.

Q. How many did you make in your own name prior to '88?

A. I didn't make any in my own name.

Q. Did you miners at this meeting, and the last meeting which you ever had, in '88, fix any fees that

(Testimony of Charles Wells.)

the United States Commissioner should charge for recording any mining location or water right notices? A. I think there was.

Q. Well, now, what do you know about that; did you at that meeting that you attended establish any fees that the United States Commissioner should receive for recording water location notices?

A. Yes, sir.

Q. You did? A. I think we did; yes. [812—662]

Q. What fees did you establish?

A. I think it was \$1.50 a claim.

Q. Don't you know that the United States provided what recording fees could be charged; what the commissioner can charge for recording?

A. Don't I know? Well, it was pretty hard to put a commissioner in charge of the recording when there was none here.

Q. Do you say that Hoyt charged these fees for recording for the reason that he was recorder of the mining district, or for the reason that he was United States Commissioner and had a right to charge them?

A. I don't know what right he had or what right he didn't have; he charged me \$1.50.

Q. Yes, and the United States Commissioners have always charged \$1.50, haven't they, or don't you know? A. I don't know; I suppose they did.

Q. Now, Charlie, how many other people do you know of your own knowledge, not what they have told you, that filed water location notices between 1880 and 1888 that complied with the local rules and



(Testimony of Charles Wells.)

regulations that you have testified concerning.

A. Well, as far as that is concerned, all that I come in contact with complied with them.

Q. I don't want to know what they have told you—

A. I didn't say that; you asked me if I knew, not if anybody told me.

Q. Charlie, you have been pretty active in getting up testimony, haven't you, for the Alaska-Juneau Company in this case?

A. Yes, and I have been very active for you, too, up here, Judge.

Q. How long have you been on the pay-roll of the Alaska-Juneau Company?

A. I have never been on the pay-roll in my life; I could be on your pay-roll if I wanted to. [813—663]

Q. How long have they had you going around looking up evidence of the custom that has prevailed—

A. I haven't been going around getting up evidence.

Q. Haven't you been going around amongst the old miners—

A. I have been going around asking some of my friends if they were subpoenaed.

Q. You were engaged by the Alaska-Juneau Company to do that?

A. I wasn't engaged, I was subpoenaed.

Q. And just on that subpoena you went around and tried to find other people who would testify in the same way that you were going to testify?

A. No more than you tried to find me yourself.

(Testimony of Charles Wells.)

Q. Did I ever speak to you—

A. You got your friends to speak to me.

Q. Now, answer the question, Charley; I only asked you a plain question—how long has it been since the Alaska-Juneau Company had you subpoenaed here?

A. They never employed me at all; they subpoenaed me to come here.

The COURT.—You didn't pay attention to the question; the question was, how long since they had you subpoenaed?

A. They subpoenaed me about two weeks ago, or three weeks ago.

Q. Since that time you have been quite active in going around and seeing if there were any other people in this community who would testify in keeping with what you thought to be the rule?

A. No more than any other witness that is interested in it; I consider a man is interested when he is subpoenaed.

Q. How many people have you asked about what they would testify concerning these rules and regulations since that subpoena was served upon you to come here as a witness? A. Not a one. [814—664]

Q. Not a one? A. Not a one.

Q. Now, of your own knowledge how many people do you know in all respects complied with the local rules pertaining to the location of water rights in locating water between the years of 1880 and 1888?

A. Why, I don't know.

(Testimony of Charles Wells.)

Q. Have you ever examined the records between the years of 1880 and 1888 to ascertain how many people in the Harris Mining District complied with these local rules and regulations with respect to making water locations?

A. I haven't; I know it is customary when you want the records examined to pay for it.

Q. You cannot call the name of any one particular person who you know of your own knowledge, between the years of 1880 and 1888, complied in all respects with these local rules and regulations?

A. Yes, I can with one company.

Q. You can with one company—who was it?

A. Harkrader, Coon and Kernon in the basin.

Q. You know of your own knowledge—

A. That they complied with the rules.

Q. Between 1880 and 1888? A. Yes.

Q. Do you have any idea how many water locations were filed between the years of 1880 and 1888?

A. No, I haven't.

Q. Then, with your knowledge as you have given it now, without ever examining the record to see how many water location notices were filed in conformity with these rules, you are willing to testify that it was the general custom between 1880 and 1888 to file water location notices [815—665] in conformity with these so-called Miners' rules and regulations?

A. They had to live up to the rules; I had to.

Q. Supposing the records would disclose the fact that they didn't do it?

(Testimony of Charles Wells.)

A. If they didn't do they would lose out.

Q. You never examined the records to find out, did you?

A. That was the laws or custom—rules and regulations.

Q. You never examined the records to ascertain whether they observed those rules between 1880 and 1888, did you?

A. Never had any occasion for it.

Q. Mr. Wells, did you ever testify on this same question in any other case in court?

A. No, sir; I never did.

Q. You have never been called upon to testify concerning these rules and regulations in any other case? A. No, sir.

Q. Have you examined the records or record-books since 1888 down to the year of 1910 to ascertain whether or not the people generally conformed to these so-called Miners' Rules and Regulations with respect to water location notices?

A. No, sir; I know I conformed to them myself.

Q. But you haven't filed but one, have you?

A. That is all, and I lived up to the laws in that one; made half a dozen but never recorded them.

Q. You made half a dozen water location notices, but never recorded them? A. No.

Q. You think that so far as the one that you made out and filed was concerned that you conformed with the law?

A. No, I don't think that—I say I lived up to the law in that.

(Testimony of Charles Wells.)

Q. The one that you made out, and which was in your own name, was posted outside of the Harris Mining District?

A. Yes, sir; it was. [816—666]

Q. There wasn't any need of conforming to the rules then?

A. We had rules all around down there.

Q. You never have filed a water location notice in your own name in the Harris Mining District, have you?

A. No, but my partner did.

Q. Who was your partner?

A. J. D. Sagemiller.

Q. When did he file any location notice?

A. I think it was along in '83 or '84.

Q. Do you know whether or not he conformed with the Miners' Rules and Regulations in the filing of his notice?

A. He didn't have any occasion—there wasn't much use for anybody to conform to it.

Q. He didn't conform to it? A. He did.

Q. Did you ever examine the record to see when that notice was recorded?

A. No, I didn't; there was no occasion for it; he recorded that notice.

Q. Do you know what time he recorded it with respect to the time of the posting?

A. No, I don't.

Q. Do you know when he commenced work on it?

A. He was a very particular man—

Q. I am asking you what you know of your own knowledge; do you know that he commenced work

(Testimony of Charles Wells.)

on it, of your own knowledge, within the time prescribed in the rules?      A. Yes.

Q. What time did you start to work with respect to the time of posting and filing?

A. About ten days after the notice was on record we started to work on the ditch so we could get our flume in.

Q. You didn't record that notice yourself?  
[817—667]      A. I did not.

Q. Your partner recorded it?      A. Yes.

Q. You don't know of your own knowledge that he recorded it, do you?

A. I know of my own knowledge—I know he recorded it.

Q. His name was Sagemiller?

A. J. D. Sagemiller.

Q. Now, how long was he a partner with you, Charlie?      A. About eight or nine years.

Q. Did you and he locate any other water rights together?      A. No; there was none on our claim.

Q. These two water rights are the only two water rights that you ever were personally interested in that you located since the year 1880?

A. They were—that was all of it.

Q. The miners of this so-called organization never have had a meeting of any kind or nature as an organization since 1888, have they?

A. Not that I know of.

Judge WINN.—That is all, Charlie.



(Testimony of Charles Wells.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Have you ever known, Mr. Wells, of anyone claiming or locating a water right in any other way except by following the miners' rules?

(Not answered because of objection.)

Q. Did you say you had located or posted a notice that had not been recorded?

A. I posted three or four.

Q. When those notices were not recorded did you claim the water after the date of recording had expired? [818—668]

(Not answered because of objection.)

Q. The question I am asking now, Mr. Wells, is whether you claimed any water right in the streams that you posted a notice on that you didn't record?

A. No, sir; I never did.

Q. What is the reason you didn't?

A. The reason was I didn't think I needed it.

Q. Didn't think you needed the water; the reason you didn't record it you didn't think you needed the water and let it lapse? A. Didn't need it.

Q. Do you know the boundaries of the Harris Mining District as established by the miners at that time? A. Yes, sir.

Q. Where were the boundaries?

A. I knew that before I ever seen the books.

Q. Do you know the boundaries of the Harris Mining District? A. Yes, sir; I do.

Q. Are Gold Creek and the properties of the

(Testimony of Charles Wells.)

Alaska-Juneau Company and those of the Alaska-Ebner Company and the Ebner Gold Mining Company, and properties in that vicinity—are they in the boundaries of the Harris Mining District?

A. They are.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.)

(Whereupon court adjourned until 1:30 P. M.)

[819—669]

#### AFTERNOON SESSION.

July 31, 1914, 1:30 P. M.

Mr. HELLENTHAL.—Since introducing the minutes of the miners of the Harris Mining District on yesterday, I find that the District was at a little later date reorganized and the boundaries somewhat extended and I offer the minutes of the Harris Mining District in evidence upon that subject as they appear upon page 66 and part of page 67, of the records; the minutes bear date of February 9, 1881.

The COURT.—I understand, Mr. Hellenthal, that this part that you offer now are the minutes of a subsequent meeting to the minutes offered in evidence yesterday, and the pages you now offer in evidence relate to the so-called Harris Mining District?

Mr. HELLENTHAL.—This is a subsequent date to that offered yesterday and is prior to the adoption of the rules regulating the use of water, and it is subsequent to the original organization of the District and relates to the organization of the District

and extends the boundaries from Taku Inlet up to Auk Village.

This will be exhibit No. 32, and I offer No. 32, to consist of pages 66 and 67—not all of 67—page 66 and page 67 up to a point referring to the Second Article, a little below the center of that page, as being the written record of the organization of the Harris Mining District under date of February 9, 1881.

The COURT.—The record offered will be admitted subject to its being connected.

Mr. HELLENTHAL.—It will be understood that the record I am offering is part of the same book that Mr. Marshall identified yesterday.

(Said exhibit No. 32 was read in evidence as follows:)

“Harrisburg, Feb. 9, 1881. An adjourned meeting of the miners of Harris District was convened at the house of P. McGlinchy at 12:30 P. M. [820—670]

The minutes of the previous meeting were read and approved.

The following preamble and resolution was then read by T. A. Wilson and passed:

Whereas, None but *bona fide* American citizens have a right to participate in making laws for the government of American citizens, and but few of those present being able to prove their citizenship,

Therefore, be it resolved that as a proof of citizenship, all persons wishing to participate in this meeting be required to make oath to the same before an

officer competent to administer oath.

The following resolution was then passed:

Resolved: That it is the wish of the miners present that Lieutenant Commander C. H. Rockwell, U. S. N., be requested to administer the oath that they are citizens of the United States, to those who desire to take the same.

Lieutenant Commander C. H. Rockwell then administered the following oath to the following named persons:

"I solemnly and sincerely swear that I am an American citizen, so help me God." Then follows the names—"Geo. E. Pilz, Hugh Campbell, John Dix, T. A. Wilson, M. H. Gibbons, James Rosewall, Frank McMahon, J. Thompson, S. Lewis, C. Brown, J. H. Turnbull, J. D. Sage Miller, C. W. Forrest, M. Dunn, J. T. Kernon, W. M. Bennett, J. A. Ring, R. Dixon, John Prior, M. J. Hibbard, Henry Coon, Jas. Fallon, F. Martin, D. Foster, M. Hosford, John Olds, J. McKinnon, J. B. Newton, W. Pierce, J. O. Nicholson, N. R. Usher.

The committee appointed at the previous meeting to draft a code of laws for the government of this mining district, presented the following preamble and laws which were adopted:

Whereas, Valuable mines having been discovered by Richard Harris and Joseph Juneau on the mainland of Alaska, during [821—671] the month of October, 1880, and no legal code of local laws having been made, the miners residing near these discoveries now think it prudent to have a code of local

(Testimony of George Harkrader.)

laws in accordance with the custom of miners and the laws of the United States, do now enact the following articles:

Article I. This mining district shall be called the Harris Mining District, and its boundary lines shall be as follows, viz.: Commencing at the Auk Indian village and running northeast true to the boundary line of Alaska and British Columbia, thence along said boundary line to where it intersects the Takou River, thence down the Takou River and Takou Inlet to Stephen's Passage, thence along the Stephen's Passage, to point of beginning." [822—672]

The plaintiff, to further maintain the issues on its part, introduced as a witness, in rebuttal, GEORGE HARKRADER, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of George Harkrader, for Plaintiff  
(in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is George Harkrader?

A. Yes, sir.

Q. You live in Juneau?      A. Yes, sir.

Q. Do you know where the Harris Mining District is?      A. Yes, sir.

Q. You say you do know where the Harris Mining District is?      A. Yes, sir.

(Testimony of George Harkrader.)

Q. When did you come to the Harris Mining District, Mr. Harkrader?     A. First of April, 1881.

Q. How long have you resided in the Harris Mining District—ever since?

A. Yes, sir; some twenty-three years.

Q. What has been your business in a general way since then—your principal business?

A. Mining.

Q. In that connection, have you had occasion to appropriate water and build ditches?

A. I did; yes, sir.

Q. Within the Harris Mining District?

A. Yes.

Q. You are the same Harkrader that built the original Harkrader ditch in Silver Bow Basin, are you not? [823—673]     A. Yes, sir.

Q. When was that built?

A. Part of it was built in '81, and part in '82.

Q. You have made other water locations besides that, haven't you?

A. I think I have; I wouldn't be sure on that question; I think we made two more in Silver Bow Basin.

Q. Silver Bow Basin is in the Harris Mining District, isn't it?     A. Yes, sir.

Q. You know where the Alaska-Juneau mines, the Ebner property and Gold Creek are?     A. Yes, sir.

Q. Those localities I have mentioned are all in the Harris Mining District, are they?

A. Yes, sir.

Q. Silver Bow Basin and the Gold Creek canyon



(Testimony of George Harkrader.)

throughout? A. Yes, sir.

Q. Now, Mr. Harkrader, do you know when the Harris Mining District was first organized?

A. I cannot say; it was in '81 some time, but I cannot say the exact date.

Q. Some where around that time?

A. Yes, sir.

Q. Do you recall the adoption of rules regulating the appropriation of water and the acquisition of water rights by the miners of the Harris Mining District in '81 or '82, or somewhere in the early '80's? You recall that that was done?

A. I do; I wasn't at the meeting that I remember of; I might have been there, but my impression is such that I cannot swear that I was there.

Q. But you recall the adoption of such rules?

A. Yes, sir. [824—674]

Q. Do you know whether the miners of the Harris Mining District had rules that were observed governing those matters to which I have just referred—do you know whether they had such rules?

A. Yes, sir; they did.

(All after the word "Yes" in the answer stricken.)

Q. Did the miners of the Harris Mining District have rules governing the appropriation and acquisition of water? A. Yes, they did.

Q. Now, do you recall a meeting of the miners of the Harris Mining District, a miners meeting, some time in the latter part of the year of 1888 when action was taken in connection with the designation of the United States Commissioner as the future re-

(Testimony of George Harkrader.)

corder of the mining district?

(Not answered because of objection.)

Q. Do you recall any action being taken by the miners of the Harris Mining District at a meeting in the year of 1888—I think the latter end of that year—in connection with the designation of the United States Commissioner as the recorder of the mining district? A. I remember of the meeting.

Q. Do you know what action was taken at that meeting?

(Objection and question reframed.)

Q. Do you know whether there was any written records kept, Mr. Harkrader, of that meeting?

A. I do not.

Q. Do you remember being at that meeting Mr. Harkrader?

A. I couldn't swear that I was at the meeting; I think I was there but I couldn't swear to it.

Q. Do you think you were there but you couldn't swear to it? A. No, sir.

Q. You remember of a meeting being called for the purpose of [825—675] taking action upon that subject by the miners of the Harris Mining District? A. I do.

Q. You remember a meeting was held subject to that call? A. Yes, sir.

Q. Now, what action did the miners take after that meeting with reference to turning the records over to the commissioner, if any?

(Not answered because of objection.)

Q. What did the miners do after the meeting in

(Testimony of George Harkrader.)

connection with the turning over of the records to the commissioner?

The COURT.—What did they do, if you know?

A. They turned the records over to the commissioner, and the commissioner was the recorder thereafter.

Q. The commissioner was the recorder of the Harris Mining District? A. Yes, sir.

Q. The records were turned over—was there a safe or anything that went with the records, Mr. Harkrader?

A. There was a safe belonging to us miners.

Q. Turned over to the commissioner for the keeping of the records?

A. It was turned over to the commissioner; it was a safe that belonged to the miners of the district here, and it was turned over to the commissioner to keep the records in, and they were kept in it until the safe got burned—until the courthouse got burned down and the records got badly burned.

Q. The records at that time, however, were preserved in the safe, most of them?

A. As far as I know they were.

Q. The safe was destroyed but not the records that were in the safe? A. Yes. [826—676]

Q. Now, Mr. Harkrader, you have heard read into the records this morning, haven't you, the rules of the Harris Mining District read from the record while the witness Wells was on the stand?

A. Yes, sir.

Q. How do those rules as read into the record com-

(Testimony of George Harkrader.)

pare with the rules that were in existence and observed by the miners in the early days of '81 and '82?

(Not answered because of objection.)

Q. Do you know where the rules were recorded that were adopted in '81 and '82 by the miners?

A. No, sir; I don't.

Q. Do you know whether they were made a part of the records of the recorder's office?

A. I couldn't say as to that whether they were or not; there were printed pamphlets of the rules.

Q. You have seen those?

A. I have seen a few of them.

Q. I hand you now a pamphlet, marked for identification Plaintiff's Exhibit No. 33, and ask you to look at it and state if that is one of the printed pamphlets to which you refer?

A. Yes, sir; it is one of them.

Q. Does that pamphlet contain the rules of the Harris Mining District governing the appropriation of water and the acquisition of water rights?

(Question reframed because of objection.)

Q. Does that pamphlet contain the rules generally observed by the miners of the Harris Mining District between the years of 1881 up to the present date?

A. It does.

Q. What part of the pamphlet, Mr. Harkrader, contains the rules governing the appropriation and acquisition of water and water rights, commencing on which page? [827—677]

The COURT.—The pages are not numbered, are they, Mr. Hellenthal?

(Testimony of George Harkrader.)

Mr. HELLENTHAL.—I will just offer the whole book.

Q. I will ask you now, Mr. Harkrader, whether the rules governing the appropriation of water, as they appear on the 4th, 5th, 6th, and 7th pages of this little pamphlet, Plaintiff's Exhibit No. 33, are the identical rules that have been generally observed by the miners of the Harris Mining District from 1881 to the present time?

A. They are, to the best of my knowledge.

Q. And have been enforced in the district during that period? A. Yes, sir.

Q. Did you know Judge Delaney in his lifetime?

A. No, sir.

Q. Do you remember when Judge Delaney and Mr. Gamel were partners here in the practice of law?

A. Yes, sir.

Q. About what time was that, Mr. Harkrader?

A. '87 or '88, I think.

Q. Were they also partners in 1891, do you remember, Mr. Harkrader?

A. I could not say if they were partners at that time or not; they were in partnership quite awhile.

Q. Do you remember Mr. Hoyt? A. I do.

Q. What was his position here?

A. He was commissioner.

Q. United States Commissioner? A. Yes, sir.

Q. Do you remember whether he was commissioner here in the year of 1891?

A. I do not. [828—678]

Mr. HELLENTHAL.—I now offer this little

(Testimony of George Harkrader.)

pamphlet, exhibit No. 33 for identification, in evidence.

The COURT.—The book that was marked Plaintiff's Exhibit 33 for identification will be received on this theory—not as the official statement of anything, but simply the testimony of this witness that certain pages which he has pointed out contain the rules that were actually observed.

(Whereupon said pamphlet was received in evidence and marked Plaintiff's Exhibit No. 33.)

Mr. HELLENTHAL.—I think you may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. How many water locations, Mr. Harkrader, have you made since you have been in Alaska?

A. Well, I am not certain about that; I know I made two—that is, myself and partners.

Q. You remember of having made two?

A. Yes, sir.

Q. When did you make your first water location?

A. It was in the fall of '81.

Q. In the fall of 1881? A. Yes, sir.

Q. Where did you make that water location?

A. Way up at the head of Silver Bow Basin on what is *called Creek*.

Q. You located that in your name?

A. No, sir; there was three partners of us in there.

Q. Did you make the location yourself or did one of your partners make it?

A. I helped one of my partners to make it.



(Testimony of George Harkrader.)

Q. When you say you helped one of your partners to make it, what do you mean? [829—679]

A. We got a stake and drove it to put the notice on, and then we consulted one another in writing up the notice.

Q. Do you remember what you put in that notice?

A. Something near it.

Q. What do you remember you put in the notice?

A. Well, we stated in the notice the number of miner's inches of water we were going to divert from the creek, and also where we were going to take it and for what use it was going to be used for.

Q. Where were you going to take it?

A. Down to the main basin, somewhere near where the Alaska-Juneau mill is.

Q. That was in 1881? A. Yes.

Q. Is that one of the water locations that Mr. Wells testified concerning this morning—was he interested in it? A. No, sir; he was not.

Q. Charley Wells wasn't interested in that location? A. No, sir.

Q. Did you post that notice yourself, or did you and you partners together post it?

A. I don't know which one of us posted it; we was both together when it was posted.

Q. Did you record it yourself personally?

A. I think my partner recorded it.

Q. You think your partner took it down to the recorder? A. Yes, Mr. Williams.

Q. Where was the recording office in 1881?

A. Some little cabin here in town; I couldn't tell

(Testimony of George Harkrader.)

you now where it was; Mr. Dixon was the recorder.

Q. Now, when did you make the other location that you spoke of—I mean your own individual locations, or you and your partner's I don't mean somebody's else? [830—680]

A. I couldn't tell definite about when we did make them; as my memory serves me we made one at the head of Snow Slide gulch up on the side of the mountain.

Q. Did you ever record that one?

A. I couldn't say; if my memory serves me right we did.

Q. What year was that?

A. It might have been '85 or '86.

Q. '85 or '86—1885 or '86?

A. Yes, I couldn't say as to that.

Q. Those are the only two that you have been personally interested in or that your name was on, that you located?

A. I think we made another location on Dixon gulch.

Q. Dixon or Woods gulch up in Gold Creek?

A. Dixon gulch.

Q. Where is that, Mr. Harkrader?

A. It goes into Specimen gulch about, maybe, 2,000 feet above Nowell's placer claim there; approximately that I will say.

Q. Above the Nowell's placer claim?

A. Yes, sir.

Q. When was it you made that location?

A. I couldn't tell you that; I couldn't tell you what year it was in.

(Testimony of George Harkrader.)

Q. Was it prior to 1888 or since 1888?

A. I wouldn't be certain we made it, but if my recollection serves me right we did.

Q. If you ever made such a location, did you record it? A. I presume so, I couldn't say it.

Q. If the record doesn't show any such notice then you never made such a location notice, did you?

A. Didn't record it at any rate if it doesn't show; I don't remember whether it was recorded or not.

Q. That was prior to 1888, did you say?

A. Yes, sir. [831—681]

Q. Those are the only three, now— the only three location notices that you, yourself, ever posted up for yourself or that you were interested in?

A. I had some partners over here at Nevada Creek on Douglas Island.

Q. Douglas Island isn't in the Harris Mining District is it?

A. Yes, sir; the Harris Mining District goes to Steven's Pass.

Q. You contend that Douglas Island is in the Harris Mining District?

A. Yes, sir; the line goes up to Steven's Pass, up over Steven's pass to Auk Village.

Q. Commences at Auk Village, doesn't it?

A. Commences at Auk Village.

Q. Where is Steven's Island?

A. Between mainland and Admiralty Island, going south.

Q. You claim, then, that Douglas Island is in that

(Testimony of George Harkrader.)

amended description that the miners made in '81 or '2?

A. Yes, sir; it is in the Harris Mining District.

Q. What locations, then, taking for granted that Douglas Island is in this recording district, what locations did you make on Douglas Island?

A. Me and my partners took up a water right on Nevada Creek.

Q. Did you record that? A. Yes, sir.

Q. When was that?

A. I think it was '91 or '2, somewhere along there; I couldn't tell you the date.

Q. How was that notice signed?

A. I don't know as I could repeat the exact words; there were four of us signed it.

Q. Did you say that was in '81 or '82?

A. Somewhere along that time, I couldn't say exactly—'91 or '92.

The COURT.—I understood you to say '91 or '92?

A. '91 or '92. [832—682]

Q. I want to get the date.

A. I couldn't tell you exactly the year.

Q. How was that location notice signed—by whom?

A. I don't know that I could tell you; I suppose it was signed in accordance with this mining law, is all I could tell you.

Q. I want to know who signed it, Mr. Harkrader.

A. I signed it for one; Antone Marks signed it; Thompson signed it, and another man signed it, I cannot remember his name; he was an Austrian and

(Testimony of George Harkrader.)

had a peculiar name—I couldn't speak it.

Q. Did you have that notice recorded?

A. Yes, sir.

Q. What time did you have it recorded with reference to the time it was posted?

A. Well, within ten days after posting.

Q. Are you sure you did?

A. I am confident of it; yes, sir.

Q. Did you commence work on it right away?

A. We built a dam across the creek and turned the water out of the creek into a ditch.

Q. What did you do with it—do you own that water right now?      A. No, sir.

Q. Sold it to some one?

A. Sold it to—it belongs to that company over there that has the ground now.

Q. Have you examined the records lately to see whether that notice is on record or not?

A. No, sir.

Q. You remember, though, of having had it recorded yourself?      A. Yes, sir.

Q. With whom—United States Commissioner at Juneau?      A. Yes, sir. [833—683]

Q. Did you ever make up an amended location notice of this water right, the last one that you speak of?

A. I couldn't say whether we did or not; I don't remember doing it.

Q. You don't remember that?      A. No.

Q. Now, how many miners' meetings did you attend in Juneau, Mr. Harkrader?

(Testimony of George Harkrader.)

A. I don't think I attended one in Juneau.

Q. Did they have other places that they held meetings of this so-called organization?

A. No; we had other places that we held meetings to decide other troubles; suppose there was trouble on a mining claim, we held a meeting right on the claim.

Q. That would be pertaining to mining claims; that would grow out of disputes on mining claims?

A. Yes, sir.

Q. You didn't have any courts here in those days, did you?      A. No, sir.

Q. Your difficulties over water rights and mining claims were submitted to the members of this organization to determine?      A. Yes, sir.

Q. And while you didn't have courts, of course you would abide by the decision made by the miners?

A. Yes, sir.

Q. And after the courts came here, your lawsuits were all tried in the courts?      A. Yes, sir.

Q. And the extending of the laws of the United States to some portions of the District of Alaska?

A. Yes, sir.

Q. And never had any other miners' meetings after that, did you?

A. Only this one, I believe, in the fall of '88.  
[834—684]

Q. That is the one you told Mr. Hellenthal that you thought some action was taken about turning over the records to the United States Commissioner?      A. Yes.



(Testimony of George Harkrader.)

Q. You were not at that meeting?

Q. I couldn't say that I was or wasn't.

Q. Now, you never attended any one of those meetings that were held up in the building where they all congregated to discuss business?

A. I don't think I was; I was always away somewhere.

Q. Did you ever examine the records, Mr. Harkrader, from 1880 up to 1888, to see what proportion of the water location notices were filed within ten days after posting?      A. No, sir; I have not.

Q. Have you ever examined the records since 1888 down to the present time at Juneau, Alaska, to ascertain what proportion of the water locations made during that period of time were recorded within ten days?      A. No, sir; I have not.

Q. Who else besides yourself, Mr. Harkrader, do you personally know of who undertook to or did comply with these miners' rules and regulations; I want you to limit the parties you mention to your own personal knowledge of what they did, and not what they told you?

A. Well, there was a general rumor that they all complied with it; I couldn't say that they did because not seeing their location notices I don't know.

Q. Are you sure that in this location notice you made you complied with the law in the recording of it, and in all other respects; are you sure of that?

A. Am positive of it; yes, sir.

Q. You are positive of it? [835—685]

A. I am pretty positive of it; I think I did.

(Testimony of George Harkrader.)

Q. Did you record your first location notice that was made on Nevada Creek at all?

A. Pretty sure we did record it.

Q. You are not positive of that, are you?

A. Quite positive of it.

Q. If the record doesn't disclose any such notice, then you didn't record it, did you? A. No.

Q. I will ask you if you ever looked at the record to see if there was any such location notice on file or not? A. I did not.

Q. Now, you don't know, of your own knowledge, any other person during these years that I have mentioned, who have complied with these so-called miners' rules and regulations pertaining to the acquisition of water?

A. I know quite a number that took up water, but I couldn't say that they complied with the rules; I suppose they did do so.

Q. You don't know of any resolution that this organization, in 1888, passed with reference to turning over the records of that organization to the United States Commissioner that came here?

A. No, sir; I don't; I know after that we had our recording done with the commissioner.

Q. Afterward you recorded with the commissioner? A. Yes, sir.

Q. Did the miners' organization pay that United States Commissioner any part of his salary?

A. Nothing more than paying for the recording that each one got done.

Q. Just the same as you would pay for the record-

(Testimony of George Harkrader.)

ing of a deed, mortgage or bill of sale?

A. Yes, sir. [836—686]

Q. You know that those fees were regulated by the United States law as to charges he made for recording those notices, or do you not know that?

A. That was my understanding, it was.

Q. There wasn't anything in your miners' rules and regulations under which this commissioner collected any fees, was there?

A. That I couldn't answer.

Q. Have you and Charley Wells talked over lately anything about the customs and rules that prevailed among the miners? A. Well, not to any extent.

Q. Have you and he examined the records to find out about some particular notices that were filed back in the '80's, since this suit was called?

A. In the Recorder's office?

Q. Yes. A. No, sir.

Q. But you have talked over with him about the miners' rules and regulations?

A. There has been some few words said, but nothing to speak of.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Harkrader, in posting notices locating water, you always attempted, as I understand, to comply with the rules?

(Question reframed because of objection.)

Q. In making water locations, and matters of that

(Testimony of George Harkrader.)

kind, would you, or would you not, be guided by the miners' rules?

(Not answered because of objection.)

Q. Did you comply with the law in making the locations you made?

A. We observed the rules laid down in this little pamphlet as being the law regarding the locating of water and mining claims in the Harris Mining District. [837—687]

Mr. HELLENTHAL.—That is all.

The COURT.—Now, Mr. Harkrader, I want to ask you a question. You have been testifying as to what the miners did up to 1888, have you not?

A. Yes, sir.

Q. Was there or was there not any miners' meeting ever held after 1888?

A. Not that I know of; not to my knowledge.

The COURT.—I mean a meeting of the miners of what has been called the Harris Mining District—was there any meeting of the miners after 1888, after the United States Commissioner came here?

A. Not to my knowledge there wasn't.

The COURT.—Now, I understand you to testify that ten articles in this little pamphlet that has been submitted to you, Plaintiff's Exhibit No. 33, were the rules that were generally observed by the miners in the Harris Mining District in relation to the location of water? A. Yes, sir; they are.

The COURT.—There is another rule that if he doesn't do that, he is held to have forfeited his claim. Now, did you ever know of any dispute between

(Testimony of George Harkrader.)

miners over water between 1880 and 1888 in the Harris Mining District?

A. Not over the right of location of water; they had disputes in regard to where several would be taking water out of the same creek, some man would take perhaps more than his share, more than he had recorded and they would have a dispute over that.

The COURT.—Did you ever hear of, or were you ever present at any meeting of miners in the Harris Mining District to settle the question as to whether a person had forfeited a water right by virtue of not complying with the rules?

A. No, sir; not that I know of. [838—688]

The COURT.—You never knew of any such question to arise? A. No, sir.

The COURT.—You don't know of any such question having arisen?

A. Don't know of any such question arising.

The COURT.—Do you recall any question having arisen at any time and passed on by the miners which involved the question as to whether a man had forfeited his water right because he violated any of these rules?

A. I never knew of anything of that kind coming up.

The COURT.—That is all.

(Questions by Mr. HELLENTHAL.)

Mr. Harkrader, do you know what, under the rules of the miners as they were understood and observed by the miners of the Harris Mining District, would



(Testimony of George Harkrader.)

be the result if a water location was not recorded within ten days?

(Not answered because of objection.)

Q. Now, what was the effect—what would be the effect upon the water, under the rules and laws of the miners as they were understood and observed by the miners generally in the Harris Mining District, if the notice of location was not recorded within ten days, the time prescribed by the rules?

The COURT.—He may answer that question—whether he knows or not.

Q. Do you know?      A. I do.

Q. What would be the effect of a failure to record a water notice within ten days as provided by the rules?

A. Why, if anybody had located the water in the meantime, he would lose his water right.

Q. If anyone had stepped in in the meantime he would lose his water location?

A. And located the same water, he would lose his.

Q. That was the rule as observed by the miners from the earliest [839—689] time—that is, 1881 to the present time?

A. That was the rule laid down in our little pamphlet containing our mining laws.

Q. That is the rule up to the present time?

A. As far as I know, it is.

(Questions by Judge WINN.)

Q. That is your opinion as to what the rules were? You have given Mr. Hellenthal your opinion as to what the rules were?      A. Not exactly my opinion.



(Testimony of George Harkrader.)

Q. Didn't you testify to the Court a while ago that you never knew of such a controversy as this to arise?

A. It was generally—

Q. That is true, isn't it; you never knew of such a controversy to arise?

A. Anything that was in the law you have to go by it; if you don't go by it you certainly know the results.

Q. Did you ever know of miners to settle any such question as you have just presented in your answer to Mr. Hellenthal's question?

A. I never knew that they did.

Q. Then, you are putting your own construction upon the rules.

A. The pamphlet tells you what the law is; if you don't observe it, you know what the penalty is.

Q. That is the reason you answered the question the way you did?     A. Yes, sir.

Q. Because you saw the rules there, and the rules provide for just what you have stated and that is the reason that you gave the opinion you did give?

A. That is what I base my opinion on; yes, sir.

Q. And nothing else?

A. And common sense along with it.

Q. Common sense and the rule?

A. Yes, sir. [840—690]

Q. And that is all?     A. Yes, sir.

Judge WINN.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. Mr. Harkrader, during your experience in the Harris Mining District, have you ever known of any-

(Testimony of George Harkrader.)

one in the court or a miners' meeting, or elsewhere, to claim a water right under a water location notice that was not recorded within ten days?

(Not answered because of objection.)

Mr. HELLENTHAL.—That is all.

(WITNESS EXCUSED.) [841—691]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal WILLIAM STEWART, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of William Stewart, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name, Mr. Stewart?

A. William Stewart.

Q. You are the same Stewart after whom the Stewart River was named?

A. That is what they say.

Q. When did you first come to Alaska?

A. I come in 1872 to Wrangell.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. Did you ever live in the Harris Mining District? A. Yes, sir.

Q. When did you first come to the Harris Mining District, Mr. Stewart? A. I come in 1880.

Q. Do you remember when the Harris Mining District was organized? A. Yes, sir.

(Testimony of William Stewart.)

Q. You remember the occasion of its organization, do you?     A. I think I remember most of it.

Q. You remember that it was organized and when it was organized?     A. Yes, sir.

Q. Do you remember the territory it embraced?

A. It embraced from the Auk Village to Taku.

Q. The territory lying from the Auk Village to the Taku River?     A. Yes, sir.

Q. Did it include within its boundary, Mr. Stewart, the territory known as the Silver Bow Basin, the neighborhood in which the [842—692] Ebner and the Alaska-Juneau mines are in Gold Creek Canyon?

A. Yes, sir.

Q. They are all in the Harris Mining District?

A. Yes, sir.

Q. Do you recall that the miners of the Harris Mining District adopted rules governing the appropriation of water and the acquisition of water rights subsequent to the time the District was organized—shortly thereafter?     A. Yes, they did.

Q. When was it they adopted these rules—about what year?     A. In '81.

Q. You have heard read here to Mr. Wells, have you, when he was on the witness-stand—heard read into the record the rules upon that subect as they appear in the minutes of the Harris Mining District?

A. Yes, sir.

Q. What do you say as to those rules as they were read, as to how they compare with the rules as they were adopted by the miners at that time and observed

(Testimony of William Stewart.)

by them—as to whether they are the rules or not?

(Question reframed because of objection.)

Q. How do those rules as they were read into the record from the minutes of the Harris Mining District, compare with the rules that were adopted by the miners at that time—as to whether they were the rules adopted or not?

(Question reframed because of objection.)

Q. Mr. Stewart, the rules that were read into the record this morning from the minute-book of the Harris Mining District, how do they compare with the rules that were in force in the district in '81 and '82—whether they were the rules or not?

(Question reframed because of objection.)

Q. Now, Mr. Stewart, do you know what rules were in force in the Harris Mining District governing the appropriation of water [843—693] and the acquisition of water rights in the years of 1881 and '82? A. Yes, I think I do.

Q. How do these rules that were read into the record in your hearing from the minute-book of the Harris Mining District compare with the rules as they were in force—whether they are the same or not?

A. I think they were, to the best of my knowledge.

Q. How long did you remain in the Harris Mining District, Mr. Stewart, at that time?

A. I left here—I quit mining in the Basin in '85.

Q. You left the District when?

A. I quit mining and I didn't leave until '86, but I quit mining, in '85.

(Testimony of William Stewart.)

Q. Up to the time that you left do you know whether the rules that were in force, that you have already testified to as being in force, were generally observed by the miners of the Harris Mining District?     A. I think they were.

Q. The first question is, Mr. Stewart, whether you know, have any knowledge about it, whether they generally observed those rules?

A. I don't know whether—

Q. The question is whether you know whether the miners, while you were here, generally observed those rules?     A. They did as far as I know.

Q. As far as you know?     A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. You came here, Mr. Stewart, to Juneau, you say, in 1880 or '81? [844—694]

A. I came here in the fall of '80.

Q. And remained here until the fall of '85?

A. Yes, sir.

Q. Did you attend any miners' meetings that were held here during that time?

A. I don't know; didn't attend many of them, but I attended this one.

Q. You attended one meeting during that time?

A. Yes, sir.

Q. When was it that you attended that meeting, as well as you can recall?

A. I couldn't give the dates to-day.

Q. It was before you left, was it?     A. Yes, sir.

(Testimony of William Stewart.)

Q. Where did they hold that meeting, if you remember, Mr. Stewart?

A. It was held in William Newcomer's house.

Q. Was that in Juneau? A. Yes, sir.

Q. What was transacted at that meeting, do you remember?

A. Well, I couldn't say exactly what it was.

Q. You don't remember anything that took place at that meeting that you attended? A. No.

Q. How many water location notices did you make yourself while you were here from 1880 to 1885, Mr. Stewart? A. Never made any.

Q. And you don't know what took place at the miners' meeting that was held that you attended—the only one—you don't know what took place there?

A. It is so long ago that I cannot recollect exactly what did take place.

Q. During that period that you were here, did you attend any trials of any matters growing out of these miners' rules, before [845—695] a miners' meeting? A. I did.

Q. What did they try?

A. They were trying a dispute about a claim in the Basin.

Q. Mining claim? A. Yes.

Q. In those days the only court they had to administer the law was the miners' organization, wasn't it?

A. Yes.

Q. There was no court in Alaska? A. No.

Q. And that is the only dispute that you ever knew



(Testimony of William Stewart.)

of that came up before this organization for settlement? A. Yes.

Q. There was no other question, that you recollect?

A. Not that I had anything to do with.

Q. You had something to do with this particular disputed mining claim? A. Yes.

Q. Did you ever attend any other miners' meeting where any other dispute was being tried out before them? A. No, sir.

Q. I mean during the time that you were here in 1881 to '85; you never attended a trial of any question that was up before this organization except the one that you have stated?

A. Not on a trial that was settled by arbitration.

Q. Did you attend any other thing that came up before the miners for settlement? A. No.

Q. Nothing else? A. No.

Q. Have you ever attended any such meeting since then? A. No, sir. [846—696]

Q. You went away in '85, and when did you come back to Juneau?

A. I quit mining in '85, but I was still here through the spring of '86, and I went in on the Yukon in the spring of '86 and come back; I was here the winter of '86.

Q. Had you ever read over the miners' rules and regulations pertaining to water rights before you left here in '85? A. No, sir.

Q. You had never seen any book they were printed in, had you? A. No, sir.

Q. You never have seen any of those printed books

(Testimony of William Stewart.)

since that time, have you?     A. No, sir.

Q. And you quit mining in '85?

A. I did—that is, in Juneau.

Q. Where have you been mining since then?

A. In the Yukon Territory.

Q. In Canada?

A. In the United States and in Canada both; they are close together.

Q. You know that isn't in the Harris Mining District, don't you?     A. No.

Q. It isn't in in the Harris Mining District?

A. No.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [847—697]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal BEN BULLARD, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Ben Bullard, for Plaintiff (in Rebuttal.)**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Ben Bullard?     A. Yes, sir.

Q. You live in Juneau?     A. I do.

Q. Do you know where the Harris Mining District is?     A. I do.

Q. What business or occupation have you followed—do you follow, Mr. Bullard?     A. Mining.

Q. How long have you followed that occupation?

(Testimony of Ben Bullard.)

A. Well, ever since I have been in Alaska, and I think 30 or 40 years before—20 years before.

Q. So you have followed it for many years?

A. Followed it for a great many years.

Q. When did you come to the Harris Mining District? A. About 1899.

Q. Did you have occasion to learn what the rules in force were in the Harris Mining District regulating and governing the appropriation of water and the acquisition of water rights? A. I did.

Q. When did you come here, did you say?

A. I came here in 1899.

Q. Did you have occasion in that year to inquire and find out what the rules were?

A. Not that year, no; that is when I came to Juneau; I began [848—698] this investigation of water rights and water laws in the Harris Mining District about 1902.

Q. Did you, in the year 1902, then find out what the local laws were that were in force in the Harris Mining District relating to the appropriation of water and the acquisition of water rights?

A. I did.

Q. Do you know what the laws were that were at that time in force in that District? A. I do.

Q. You have heard read into the records from the minutes of the Harris Mining District certain laws governing the appropriation of water,—read in this morning? A. I have.

Q. How did the laws as you found them in force in the year 1902 compare with those laws that were

(Testimony of Ben Bullard.)

read into the record?

A. They compare exactly—that is, those were the rules I found to be in force.

Q. Those were the rules you found to be in force at that time?      A. Yes, sir.

Q. Do you know whether those rules were at that time, and since that time up to the present time have been, generally followed by the miners in the Harris Mining District in the appropriation of water and the acquisition of water rights?

A. I do; that has been the purpose—

Q. I will now ask you if those rules as read into the record from the minutes of the Harris Mining District relating to the appropriation and acquisition of water rights, have been generally followed and observed by the miners of the Harris Mining District between the year 1902 and the present time?

A. So far as I know I think they have, yes.

Q. Do you know the effect of a failure to comply with the rules, under the rules in force during those years,—Do you know [849—699] what the effect would be of a failure to comply with the rules in an attempt to acquire a water right under the rules as you found them in force and as they have been in force during the time you have testified to, from 1902 to the present time.      A. I do.

Q. What would the effect be?

A. It would result in a forfeiture of whatever rights might be acquired and a termination of them.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of Ben Bullard.)

Cross-examination.

(By Judge WINN.)

Q. How many water locations have you ever made, Mr. Bullard, since you have been here?

A. I have made two.

Q. Where were they?

A. One on McGinnis Creek and the other on what is known as Nugget Creek.

Q. Ever make one on Lemon Creek?

A. I did not.

Q. You made one on Nugget Creek, and one where else?     A. On McGinnis Creek.

Q. Where is McGinnis Creek?

A. It is a tributary of Montana Creek; it is north of Mendenhall Glacier; it flows into the Mendenhall River.

Q. When did you make that last location?

A. That was the first one I made; I made that in 1903.

Q. Did you draw your own notice?

A. I didn't make that location for myself; I made that for and in behalf of the Mansfield Mining Company; they employed my services to go out there and locate a water right for them on McGinnis Creek and to construct a ditch, flume and pipe-line, [850—700] and so forth, down to their works.

Q. Did you ever make one on Steep Creek, between Mendenhall Glacier and Lemon Creek?     A. I did.

Q. That is the third one?

A. That is the third one, yes; I had forgotten about that.

(Testimony of Ben Bullard.)

Q. When did you make that?

A. That was made in about 1907, thereabouts; that was made subsequent to the one I made on Nugget Creek; that was made in 1905.

Q. In this one that you say you had forgotten about, did you follow the miners' rules and regulations in posting and recording within ten days?

A. I did.

Q. You are sure of that?      A. I am sure.

Q. The other two, did you also post and record within ten days?      A. What?

Q. The other two locations that you made, did you post and record within ten days?

A. The McGinnis Creek notice I didn't record; the officers of the company recorded that.

Q. You made it and turned it over to them, did you?

A. Oh, no; I was there in their behalf; I located a favorable place to divert the water, and made the surveys for ditches, and so forth; and when the location of the water right was made I dictated the form of notice—those people were not acquainted with the subject matter, and I acted as an agent for them; they were present, but I don't think I wrote that notice; I think I dictated it to them or told them how to write it, and am certain they recorded it; I cannot say, but I am quite sure now that I did record the Steep Creek notice within ten days, and I think that I recorded the Nugget Creek notice within ten days; I think I did—I am pretty sure I did. [851—701]

Q. Are you positive of it?



(Testimony of Ben Bullard.)

A. Yes, I am sure I recorded the Nugget Creek notice within ten days, but now it may have been possible I missed a day or so on the Steep Creek notice, I don't think I did, though; I intended to comply with the rules.

Q. But if you didn't record it within the ten days you didn't comply with the rules, did you?

A. I did not.

Q. Where is the other one you made—McGinnis Creek, Nugget Creek and Steep Creek?

A. That is all.

Q. The other two besides the one I was just questioning you about, did you post and record within the ten days?

A. You are questioning me now about the Steep Creek notice?

Q. I just got off the Steep Creek notice and was talking about the other two—did you post those and record them within the ten days?

A. I told you I recorded the Nugget Creek notice within ten days, but the McGinnis Creek notice was not for myself, it was for the company and I acted as agent for the Mansfield Company; whether they recorded the notice within ten days or not I couldn't say; it wasn't my duty to record the notice—they had officers there for that.

Q. Have you gone through the records at Juneau to ascertain the fact as to whether or not these rules of posting and recording as laid down in the Miners' rules were universally followed? A. Why, no.

Q. Did you go through them to find out if it was

(Testimony of Ben Bullard.)

generally followed or not,—did you go through the records to find out whether or not the miners' rules and regulations with respect to posting and recording has been generally followed?

A. I never made any such investigation.

Q. How many water notices, Mr. Bullard, besides these two, during [852—702] this entire time you have been in this recording district, do you have personal knowledge of as having been posted and recorded within the time and under the terms and conditions of the miners' rules?

A. I haven't any other knowledge, I don't think, on that subject.

Q. Now, this Harris Mining District, what do you understand to be the boundaries of it?

A. Well, at that time I knew the boundaries because I saw the records of the boundaries; that has somewhat passed out of my memory, but I think it went down to Taku River and over to Steven's Channel and off to Sitka I don't know how far; I couldn't define the boundaries of the Harris District; I know that it contained the territory in which I posted the notice, because I investigated the subject at that time.

Q. About how many miles does it cover—do you remember from the description given in the miners' rules if it covers a rectangular scope of country?

A. I don't; no, sir.

Q. Do you know how many miles wide or long it is?

A. I don't; no, sir.

Q. It includes all of Sheep Creek, doesn't it, near Juneau?

A. I am quite sure it does.

(Testimony of Ben Bullard.)

Q. All of Silver Bow Basin?      A. Yes, sir.

Q. Mendenhall?      A. Yes, sir.

Q. Salmon Creek?      A. Yes.

Q. Nugget Creek?      A. Yes.

Q. Lemon Creek?      A. Yes.

Q. It includes the principal part of the mining country in [853—703] Southeastern Alaska, does it not?

A. Yes; it includes this area in which the greatest portion of the mines are located.

Q. Now, at any time during this period that you have been here, have there been any trials of disputed matters settled by any miner's organization that you know of?      A. None that I know of.

Q. You don't know of the miners ever taking up any question of forfeiture under those rules and trying it out, do you?      A. I do not.

Q. You know there hasn't been any meeting of any such organization since you have been here?

A. I think there has been none; I never heard of it.

Q. These notices you made, you recorded them with the United States Commissioner, ex-officio recorder?      A. Yes, sir.

Q. And those in the Harris Mining District are all recorded in Juneau, were they?      A. Yes, sir.

Q. You recorded them just the same as you did any other instrument, didn't you?      A. Yes, sir.

Q. All disputes over mining rights and mining claims and water rights since you have been here have been determined and tried in the courts under the laws of Alaska, haven't they?

(Testimony of Ben Bullard.)

A. I think they have.

Q. The courts and these recording offices were all established when you came here, were they not, Mr. Bullard; that is, you had the Commissioner's court, Probate court and Recorder's office, and United States District courts—they were all established when you came here? A. Yes, sir.

Judge WINN.—That is all.

(WITNESS EXCUSED.) [854—704]

The plaintiff, further to maintain the issues on its part, introduced as a witness in rebuttal PERRY WILEY, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Testimony of Perry Wiley, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Perry Wiley? A. Yes, sir.

Q. You live in Juneau at present? A. Yes, sir.

Q. When did you first come to Juneau?

A. Latter part of 1896.

Q. Did you ever have occasion to inquire into the question as to what were the rules governing the appropriation of water, and other rules of like character, in the Harris Mining District—if so, at what time? A. Shortly after 1898?

Q. At that time did you ascertain what the rules and regulations governing that subject were in the Harris Mining District which were in force at that

(Testimony of Perry Wiley.)  
time in the Harris Mining District?

A. I had copies of the Harris Mining District rules which Judge Delaney gave me.

Q. I hand you here a little pamphlet, marked Plaintiff's Exhibit No. 33, and ask you to look at it and state how that compares—the rules therein stated, compare with the laws as you found them to be in force at the time you have mentioned, 1898?

A. Well, the pamphlet is the same, I guess; it is one got out by Delaney and Gamel.

Q. The pamphlet that you have was identical with that one? A. Yes.

Q. You have been around here more or less since that time, haven't you, Mr. Wiley? [855—705]

A. Yes, sir.

Q. Do you know, in a general way, whether the rules have been observed since that time by the miners of the District?

A. I have always heard it referred to that way.  
(Answer stricken.)

Q. In a general way, Mr. Wiley, were those rules observed generally by the miners since the time that you have mentioned to the present date?

A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Now, Mr. Wiley, whatever notices you have ever made were up in the Porcupine Mining District, weren't they?

(Testimony of Perry Wiley.)

A. A few in Harris Mining District in recent years.

Q. How many have you made, do you know?

A. I think there were two made.

Q. Where?     A. Auk Bay.

Q. When did you make those?

A. I think it was 1911 or '12.

Q. Both of them?

A. Yes; I didn't make them myself; my partners made them.

Q. Who did the posting of them?     A. Partners.

Q. Who was your partner, Mr. Wiley?

A. E. C. Spaulding and Butterball.

Q. Did you ever have anything to do with the recording of them?

A. No; they were recorded, though; I saw the certificate after they were recorded, the stamp.

Q. Were they recorded within ten days after they were posted—do you know that without looking at the record?     [856—706]

A. I won't be sure that they were, but I think they were, right away, immediately.

Q. You are not positive of that?

A. Not positive.

Q. Those are the only two that you have ever made or been interested in?

A. Inside the Harris Mining District.

Q. Now, the Harris Mining District extends over a large scope of the mining country in Southeastern Alaska, doesn't it, Mr. Wiley?

A. Why, yes; a good portion of it.



(Testimony of Perry Wiley.)

Q. You have never gone through the records to ascertain what general rule has been followed up with reference to the posting and filing of notices, have you?

A. No, nothing more than from those pamphlets that were issued.

Q. Now, what makes you say in a general way they were followed?

A. They used those as a general guide to go by.

Q. Who did you ever see have those besides yourself?

A. Most all of the prospectors have them.

Q. Can you name one?

A. Burbridge had one.

Q. Who else do you remember had one?

A. James Mitchell.

Q. Who was he?

A. A prospector on the Island.

Q. Who else?

A. I don't know that I can name any in particular.

Q. Jim Burbridge is dead, isn't he?

A. Yes, sir.

Q. Do you know where Mitchell is?

A. I guess he is up at Eagle River now; he lives on the Island.

Q. I would like to have you state how those two water locations that you made were signed—just give the names of the parties who signed them? [857—707]

A. I think they were signed by E. C. Spaulding

(Testimony of Perry Wiley.)

and Alex Butterball and myself; I wouldn't be quite certain about it, without looking at my notes.

Q. And in 1911?

A. I think it was '11 or '12.

Q. That is as near as you can give the date?

A. Yes, sir.

Q. Have you got any one of those in your possession yet?      A. I think so.

Q. If it isn't too much trouble I wish you would look them up, Mr. Wiley.

A. Some of us have got them.

Q. If you can find them I wish you would look them up, and if you are going to be around here in the next few days I would like to see them. You don't know what rule Thane's people, who are the head of the Alaska-Gastineau Company used in posting filing and recording notices, do you?

A. I do not.

Q. You don't know what rule the Treadwell Company followed, do you?      A. I do not.

Q. You don't know what the Alaska-Juneau Company—what rules it followed, do you?

A. I do not.

Q. You don't know what rules the Ebner Gold Mining Company followed, do you?      A. I do not.

Q. Those are the largest mining companies in Southeastern Alaska, are they not?

A. Yes, sir.

Q. You have never known of any disputes that were tried out under the miners' rules and regulations since you came here?

(Testimony of Perry Wiley.)

A. That was all done away with before I came here.  
[858—708]

Q. Notices are recorded with the United States Commissioner here at Juneau? A. Yes, sir.

Q. And all disputes are settled in the courts over mining locations? A. Yes, sir.

Q. Those suits you haven't kept up with?

A. No.

Q. You don't know of any suits that have ever been tried in court where the question of the forfeiture of a mining location was particularly in dispute, have you? A. No.

Q. Of your own personal knowledge, I mean?

A. No.

Q. You have never had any such suit yourself?

A. No.

Judge WINN.—That is all.

#### Redirect Examination.

(By Mr. HELLENTHAL.)

Q. You said the matter of settling—what you meant to say—I don't know whether your answer to Judge Winn's question is clear—you meant to say that the matter of settling disputes before miners' meetings had been done away with before you came here? A. That is what I mean to say.

Q. You didn't mean to say that the rules had been done away with, but the enforcing of them before the miners' meetings? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

The COURT.—I regard this as quite an important

(Testimony of Perry Wiley.)

point, and I want to ask—I understood you to say, Mr. Wiley, that the little pamphlet which is marked Plaintiff's Exhibit No. 33, [859—709] which bears on the title page the statement that it was prepared by Delaney & Gamel, Attorneys at Law, contains the rules and regulations that you found to be in force among the miners when you came here in 1899?

A. Yes, sir; in conversation with the Judge, he gave me two or three of those pamphlets and told me that he kept them for reference when he was on the bench and that they were the rules in force.

The COURT.—Now, among those rules that you say were in force in this: “Article 6. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein; First—the extent required, measured under a four-inch pressure. Second—The purpose for which he claims it, and the place of intended use”—that rule was in force at the time, was it? A. Supposed to be.

The COURT.—How did you learn that that rule was in force at the time?

A. Well, just as I say; just as the rules give it and the Judge told me the rules were in force here.

The COURT.—Did you ever hear any miners say that that rule was in force?

A. Not particularly in this District here; we were organizing at that time a miners' organization in the Porcupine District.

The COURT.—Did you ever hear any miners in the Harris Mining District say that that rule which

(Testimony of Perry Wiley.)

I have just read to you—say that that rule was in force in the Harris Mining District in 1899?

A. Well, I don't know that I ever did hear them say it was in force.

The COURT.—Did you see any location notices of water in which those things were all set forth?

A. I have saw location notices of water where they were staked [860—710] up, but whether they were recorded—

The COURT.—I am not talking about the recording now. Did you ever see any location notices of water in the Harris Mining District in which there was set forth the number of inches desired, and the purpose for which it was claimed, and the intended use, in 1899, when you came here?

A. No, I don't know that I ever did.

The COURT.—You never saw any; and did any miner ever tell you that there was such a rule in force?

A. Not that I can recall from my memory now.

The COURT.—I don't mean to confine you to the name of the miner, but do you remember that any miner ever did tell you that that was the rule in the Harris Mining District?

A. No, I don't believe so.

The COURT.—Another rule is that “A copy of the notice must within ten days after it is posted be recorded in the books kept by the recorder of the district.” Did any miner ever tell you that that was the rule of the Harris Mining District—that it

(Testimony of Perry Wiley.)

must be recorded within 10 days after a location notice of water was posted?

A. Yes, that was always understood that you should do it.

The COURT.—Now, how did you understand it?

A. I must have got it from miners around here at various times.

The COURT.—Do you remember of any miner that ever told you there was such a rule?

A. I couldn't refer back to any particular occasion when I was discussing the proposition.

The COURT.—But you do remember distinctly that some miner told you that that was the rule in the Harris Mining District in 1899?

A. I remember that that was the custom, yes; general custom as I learned it here.

The COURT.—Now, Article 7 of those rules reads that “Within twenty days during the working season, after the notice is [861—711] posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion. unless temporarily interrupted by rain or snow.” Now, did any miner ever tell you that that was a rule in force—custom or rule in force in the Harris Mining District in 1899?

A. No, I don't know that they ever told me; I don't remember of them telling me.

The COURT.—Do you know that that rule was in force in the Harris Mining District in 1899?



(Testimony of Perry Wiley.)

A. No, I don't know that it was from my personal observation.

The COURT.—You were here at that time, weren't you?

A. No, not in the Harris Mining District; I was in and out of here, but I wasn't operating here.

The COURT.—“Article 8. By ‘completion’ it is meant conducting the waters to the place of intended use.” Did you know, in 1899, that that was what the miners of the Harris Mining District meant by the use of the word completion in what had gone before? A. Just read that again, please.

The COURT.—“Within twenty days, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by rain or snow. By completion it is meant conducting the waters of the place of intended use.”

A. Yes; I always understood that you had to commence work and work continually on the job until it was completed.

The COURT.—Until the job was completed.

A. Yes; you couldn't work a little off and on.

The COURT.—Did you understand that that was what the miners of this District understood by the word “completion”? [862—712]

A. In general, yes.

The COURT.—“Article 9. By a compliance with the above rules, the claimant's right to the use of

(Testimony of Perry Wiley.)

the water relates back to the time the notice was posted.” In 1899, did any miner of the Harris Mining District tell you that if you located a claim in the Harris Mining District and did these things that have been mentioned,—posted your notice, and so forth, and recorded it,—that your claim would relate back to the time of posting?

A. I don’t know that I ever discussed it with anybody.

The COURT.—You don’t know whether anybody ever told you that or not?

A. Don’t remember ever discussing it with anybody.

The COURT.—Do you know whether or not that was a rule at that time?

A. Nothing more than the rules which I had read in the Harris Mining District.

The COURT.—Nothing more than appeared in the pamphlet which Judge Delaney gave you?

A. Yes; the rules of the Harris Mining District.

The COURT.—What did you understand when Judge Delaney handed you a pamphlet like this—did you understand that those were the rules that they had adopted a long time ago, or did you understand that those were the rules that were in force at the time, 1899?

A. I understood it was the rules that were in force at that time; he told me that; he told me he always kept them for reference while he was on the bench, and we were organizing up at Porcupine and he gave me them for reference also.

(Testimony of Perry Wiley.)

The COURT.—Now, it also says “Article 10. A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies [863—713] therewith.” Did anybody tell you that was the rule?

A. No, nobody told me that was the rule.

The COURT.—Did anybody ever tell you that under such and such a clause a man’s water right had been declared forfeited because he didn’t comply with the rules? A. I don’t know personally.

Q. But did anybody ever tell you that anybody’s water right had been forfeited because he didn’t comply with the rules?

A. Not that I can recall now.

Q. Did Judge Delaney tell you that?

A. No, not that particular clause.

Q. Did you ever know of the question arising anywhere—did you ever know what the miners did in such a case as that?

A. In the Harris Mining District?

The COURT.—Yes.

A. No, I never knew of such a case that come up before my observation.

The COURT.—Never heard of anything of that kind? A. No, sir.

The COURT.—Never heard of anybody trying to forfeit another’s rights on account of failure to comply with these rules? A. No, sir.

The COURT.—That is all.

(Questions by Judge WINN.)

Q. The fact is you went from Juneau to Porcupine

(Testimony of Perry Wiley.)

to mine when you first came here, didn't you, Mr. Wiley?     A. No, I went to Cook's Inlet.

Q. How long did you stay there?

A. A year, and then I came back here.

Q. And then you went to Porcupine?

A. Yes, sir.

Q. And you stayed up there and mined how long?

[864—714]     A. Oh, five or six years.

Q. Up to what year?

Q. Up to the spring of 1904.

Q. And over that period of time you didn't have any experience in locating water rights, mining claims or anything else in the Harris Mining District?     A. No, not in the Harris Mining District.

Q. And you got a pamphlet that Judge Delaney gave you, with the intention of organizing a mining district up in the Porcupine Mining country, didn't you?     A. He gave it to me as a reference.

Q. As a reference, and to follow?     A. Yes, sir.

Q. And you know that the pamphlet also had rules and regulations about taking up mining claims?

A. Yes, sr.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Judge Delaney was the leading mining lawyer of this country in the year of 1899, was he not?

A. I suppose he was; considered at that time one of the best lawyers here.

Q. You considered him one of the best lawyers here?     A. Yes.

(Testimony of Perry Wiley.)

Q. And he told you that all the rules that were contained in that pamphlet were in force at that time; not any single one, but all of them?

(Not answered because of objection.)

Q. Now, Mr. Wiley, did you ever hear any miners in the District tell you that all these rules in this little pamphlet were the rules in force in the District? The question I am asking, Mr. Wiley,—the Court or counsel asked you whether any [865—715] particular miner had ever told you that any particular clause mentioned, or rule, was in force, and you have replied that you didn't recall any telling you that any particular rule was—

A. Yes, sir.

Q. Did you ever have any conversation, or do you recall any conversation with miners in the District in which you were told that all of the rules contained in this pamphlet were the rules in force in the District?

(Form of question changed because of objection.)

Q. What, if any, conversation have you had—

A. I can't recall any particular conversation with any particular miners, but, of course, it was the general impression that the pamphlet as a whole—as I said, it was the local laws of the Harris Mining District.

Q. It is generally understood among miners that all the rules in this little pamphlet were in force by the miners generally.

(Not answered because of objection.)

Mr. HELLENTHAL.—That is all.

(Testimony of Perry Wiley.)

Recross-examination.

(By Judge WINN.)

Q. Mr. Wiley, with whom did you ever talk to get this general impression?

A. As I say, I couldn't give you any particular conversation at any particular time, but some of them—

Q. You never talked with any of these people, did you?     A. No, sir.

Q. Of the Ebner Gold Mining Company?

A. Not that I know of.

Q. I want you to single out some particular person you had this conversation with.

A. Why, as I say, it was generally understood that those were the local rules of the Harris Mining District—any particular [866—716] time or any particular conversation I had I couldn't give.

Q. You got your general understanding by reason of having that pamphlet, didn't you, Mr. Wiley?

A. Yes.

Q. You didn't stay in and about Juneau here and take up any mining claims when you first came here?

A. No, sir.

Q. So you got the impression from the conversation you had with Judge Delaney and from the rules and regulations, didn't you, Mr. Wiley?

A. Yes; he gave them to me.

Judge WINN.—That is all.



(Testimony of Perry Wiley.)

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Did you ever talk with Cordwell Jim about that, Mr. Wiley?

(Objection.)

Q. Who was Cordwell Jim? A. Mr. Burbridge.

Q. What was Mr. Burbridge's occupation?

A. Prospector.

Q. Mining and prospecting?

A. Mining and prospecting.

Q. Did you ever talk with him about it?

A. I have; I don't know that I could recall any particular time.

Q. You have mentioned Mitchell, also; I think he had a copy of this book; did you ever talk with him about it?

A. Yes; I talked with him about it, we discussed these things; I don't know any particular cause there that was brought out and discussed, you understand.

Q. Mitchell was a miner, wasn't he?

A. Yes, he is here yet.

Q. Do you recall having a conversation with others of like [867—717] character when the rules were particularly discussed—a conversation of the character you have testified to having had with Mitchell and Burbridge? A. I don't know that I did.

Q. Don't recall it? A. No.

Mr. HELLENTHAL.—That's all.

Judge WINN.—That's all.

(Witness excused.) [868—718]

(Testimony of Perry Wiley.)

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal C. A. FOX, who, then being sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions, as follows:

**Testimony of C. A. Fox, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What are your initials? A. C. A.

Q. Where do you live? A. I live in Juneau.

Q. Do you know where the Harris Mining District is?

A. I know where the Harris Mining District is, yes.

Q. How long have you lived in the Harris Mining District? A. Off and on for 32 years.

Q. What year did you first come here? A. 1881.

Q. Do you remember the time the district was organized?

A. The district was organized before I got here, called the Harris Mining District at the time.

Q. Do you know the boundaries of the district?

A. The boundaries, as I understood it at that time, were from Auk Inlet to the Canadian boundary to the Taku up the other side of Douglas Island and to the Auk Inlet again.

Q. Would take in the Gold Creek Basin, the Silver Bow Basin and all that country? A. Yes, sir.

Q. Had the miners adopted the rules relating to the appropriation and acquisition of water rights when you came here?

(Testimony of C. A. Fox.)

A. I couldn't say because I went into the interior; I wasn't here [869—719] when those laws were made; I went with Slim Jim and others into the Yukon.

Q. When did you return from the Yukon?

A. In the fall of '81, and then the fall of '82 and the fall of '83.

Q. Did the miners of the Harris Mining District have laws at that time upon the subject of appropriating waters?

(Not answered because of objection.)

Q. Did the miners of the Harris Mining District observe laws and rules relating to the appropriation of water and the acquisition of water rights at that time—do you know whether they observed rules at that time? A. Yes, I know they had laws.

Q. How did the laws that they observed at that time, '81 and '82, compare with the rules that have been read into the record from the minutes of the Harris Mining District—you heard those read, didn't you, Mr. Fox? A. Yes.

Q. How do they compare?

A. As I understood them at the time, they are just the same.

Q. Just the same?

A. As I understood them at the time.

Q. How long have you been here off and on, Mr. Fox?

A. I left in '84, and didn't come back until '98.

Q. And since then have you been here all of the time?

(Testimony of C. A. Fox.)

A. I was here five or six years and then I went below again, and came back about two years ago, and then went again last fall, and then came back again.

Q. Do you know what laws have been observed by the miners of the Harris Mining District during the various times you were here, commencing with the time in '81 up to the present time—say yes or no, whether you know? [870—720]

A. Yes.

Q. How do the laws that have been observed by the miners of the Harris Mining District in relation to the appropriation of water and the acquisition of water rights during the years you have been here, from 1881 to the present time, compare with the rules you heard read into the record from the minutes of the Harris Mining District as to whether they were the same or not?

A. As I understand them, yes.

Q. And they were the same?

A. As I understand them.

Q. These rules were generally observed by the miners of the Harris Mining District during that time, and are still being so observed?

A. Yes, as far as I know.

Q. Mr. Fox, have you been mining in this district?

A. Yes, and located claims in the district.

Q. And you are a miner by occupation?

A. I have followed it all my life.

Mr. HELLENTHAL.—You may cross-examine.

(Testimony of C. A. Fox.)

Cross-examination.

(By Judge WINN.)

Q. What mining have you done in the Harris Mining District, Mr. Fox?

A. I have four claims over on Douglas Island, and I think there was probably three or four hundred feet of tunnel—

Q. Ever locate any water?      A. Never did.

Q. Now, when you answered the question about what law there was in force and effect at the various times that Mr. Hellenthal questioned you about, what did you mean, Mr. Fox? [871—721]

A. I mean the general understanding between miners of the law in the district, the rule understood by the miners in the district of the laws that were in effect.

Q. What law?

A. The general laws made by the miners?

Q. Pertaining to mining claims?

A. And everything else pertaining to the workings of mines in the district, as I understand it.

Q. What did you understand to be the rules governing the acquisition of water? Just state, please.

A. I understood from general conversation amongst the miners—we always talked together about these matters,—that if you located a water claim you had ten days to put up a notice on it, and after that 10 days was passed you had 20 days to do some work or something to designate what you were going to do with this water, put it to some use; that was my understanding.

(Testimony of C. A. Fox.)

Q. What else?

A. If you failed to do that you lost your water right.

Q. Anything else?

A. That is all I know of in that line.

Q. Did you know that you had to contain in your water location notice that you took up a certain number of miner's inches of water?      A. Yes, sir.

Q. Did you ever see a water location of that kind that had all the requirements in it?

A. I never did.

Q. Did you ever see any water location by anybody posted anywhere?

A. Yes, I saw a location notice up on Nevada Creek where they took the water out.

Q. Have you ever seen any water location notice posted, in which it stated that you have to take so many miner's inches of water? [872—722]

A. Yes.

Q. Where?      A. In California.

Q. I mean in the Harris Mining District?

A. I seen notices on the claims; haven't examined them.

Q. What particular miners did you have conversations with about these location notices?

A. That is a hard one.

Q. I want you to tell me what particular miner you ever discussed these matters with, and when you discussed it with them?

A. I have discussed it with numerous miners, I couldn't tell you any particular person.



(Testimony of C. A. Fox.)

Q. You cannot tell me the particular place, can you?     A. In Juneau.

Q. When did you discuss that in Juneau?

A. A great many times.

Q. When did you last discuss it?

A. I think I was speaking to Mike Hudson five or ten minutes ago.

Q. He is a witness in this case, isn't he?

A. He might be, I don't know.

Q. You have discussed it with these other witnesses, too, haven't you?

A. I cannot say, I don't know who the other witnesses are.

Q. Tell me some other persons you have talked this over with.

A. I told you I talked with a great many people in general.

Q. How often have you discussed that in the last two years?

A. I will tell you—I am a man that talks a great deal about everything, but to tell you some particular person that I talked it with, that is a little too numerous for me.

Q. Did you ever hear any miners discuss this part of the rules and regulations—that the person entitled to the use may [873—723] change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe *of* aqueduct by which the diversion is made to a place beyond that where the first use was made—did you ever hear that discussed?

(Testimony of C. A. Fox.)

A. I think Dick Johnson and I discussed that years ago.

Q. Did you ever discuss this part—"A water appropriation may be turned into the channel of another stream and mingled with its waters and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished"—did you ever discuss that with anybody?

A. I couldn't tell you in particular; Mr. Johnson and I was thinking of taking up some water and we discussed the whole thing, what a person would have to do to comply with them.

Q. When did you do that?

A. A number of years ago.

Q. Did you have a copy of the rules?      A. No.

Q. When did you first see a copy of these rules?

A. I think probably six or seven days ago.

Q. When did you see one before that time?

A. Never saw it before.

Q. You saw that to kind of brush up in the case, did you?

A. I didn't do anything of the kind; that was before I knew I was going to testify in this case.

Q. Who gave you those rules?

A. I asked somebody—I don't know just who—but I told them I would like to look over them.

Q. Who did you ask?

A. I couldn't tell you the particular person.

Q. Don't you know from whom you got the rules just a week ago?

A. I couldn't say positively who it was now, no.

(Testimony of C. A. Fox.)

Q. Is your memory good or bad, Mr. Fox? [874—724]

A. That is for the authorities to determine.

Q. You still remember conversations and things that took place 25 or 30 years ago, but just seven days you got a copy of these rules and regulations and you don't know from whom you got them, is that true?

A. Let me think a minute, because I will tell you honestly my mind isn't very good lately—let me think a minute.

Q. You cannot remember, can you, Mr. Fox—how came the person to give them to you—how was the subject brought up?

A. There was somebody talking about a book that Delaney had got out or had printed as a hand-book as the mining laws of this District.

Q. Where did the conversation take place?

A. It took place in Mr. Hellenthal's office.

Q. And Mr. Hellenthal gave you a copy of those rules to look over, didn't he?

A. I couldn't say that he did; it was somebody that was in the office; someone that had the book and I asked for it and said I would like to see one of those books.

Q. Did you discuss the matter in there then?

A. I did not.

Q. Did you discuss the matter before the rules were given to you? A. I did not.

Q. When did you discuss the matter with Mr. Hellenthal?

A. I didn't discuss it with Mr. Hellenthal.

(Testimony of C. A. Fox.)

Q. Whom did you tell you knew anything about these rules and regulations?

A. I guess that I have talked with every man I am acquainted with of the old-timers.

Q. Who subpoenaed you?     A. The Marshal.

Q. How long ago?

A. Yesterday, I think.     [875—725]

Q. You didn't know when Mr. Hellenthal handed you these rules to read over that you were going to be subpoenaed?     A. No more than you did, no.

Q. That is the first time you ever saw those rules and regulations?

A. First time I ever saw the book.

Q. The first time you ever saw those rules in writing, or any way?

A. I never looked over the record.

Q. You don't know how long ago it was that you discussed these matters with Dick Johnson?

A. It was sometime in '96 or '7, along in there; we were going down to the Big Missouri.

Q. 1896?     A. Sometime along there.

Q. Dick Johnson is dead now, isn't he?

A. Yes, I think so.

Q. Did you ever discuss this—that a water location shall state that the person claims the water there flowing to the extent of, giving the number, miner's inches, measured under a four-inch pressure—did you ever discuss that part of the rule?

A. I couldn't say positively that I discussed any particular part, but I have discussed the whole thing in general.

(Testimony of C. A. Fox.)

Q. With who else besides Dick Johnson and some of these witnesses that are here to testify did you discuss it?

A. Oh, I talked to quite a number of people in my time, since I have been in Juneau about these matters, but I couldn't pick out the place nor the people—that would be pretty hard to do.

Q. In the last six or seven days, though, you have studied over these rules?

A. I have done nothing of the kind.

Q. Didn't read them over?

A. I did read them over to see if they were the same as the general conversation and the general idea we carried among [876—726] each other, if they were the same as I remembered them.

Q. I wish you would tell some mining people besides Dick Johnson and Mike Hudson.

A. I can't think of a person.

Q. You can't remember?

A. No particular person.

Q. You came to Juneau first in 1881? A. '81.

Q. Left here and was gone how long?

A. I left in '84 and come back in '98.

Q. Were away 14 years?

A. I guess that is about right.

Q. While you were away that 14 years you didn't discuss anything about these miners' rules and regulations, did you? A. Not that I remember of.

Q. Have you been here ever since you came back from the Yukon, in the Harris Mining District?

A. No.

(Testimony of C. A. Fox.)

Q. When did you go out of the Harris Mining District next?

A. I left here—I don't remember just exactly the year, but six or seven years ago, I know.

Q. When did you come back then?

A. I came back September; it will be two years this September coming.

Q. And that is the only time that you have ever lived in the Harris Mining District, and you never took up a water right in your life, in Alaska?

A. No, sir.

Q. Did you ever know of any person to post any water location notice in Alaska?

A. Never have, no.

Q. Did you ever see either a mining or water location notice that was posted in Alaska?

A. Don't think I have; not to my memory; never was interested. [877—727]

Q. You never examined the records here to ascertain how many people complied with these rules respecting the taking up of water, did you?

A. None at all.

Q. You don't know how many of the notices would state that they took so many miner's inches of water under a four-inch pressure?

A. Never noticed any of the notices on any claims, that I remember of at all; never have been interested in any way at all.

Q. What do you do—do you work in your mine on Douglas Island?

A. I go up there once in a while; was up there last week.



(Testimony of C. A. Fox.)

Q. What else do you do?

A. I walk around, go home, and back and forth.

Q. What is your business?

A. I haven't any particular business.

Q. You are not doing any work except over in your mine? A. That is all.

Q. Do they adjoin any of the mines of the Treadwell Company? A. None whatever.

Q. On the same Island?

A. On the same Island.

Q. When did you locate that, did you say?

A. It was 1892 or '3, I think; I couldn't tell the date, or which year.

Q. 1902 or '3? A. Yes, along there.

Q. Those were the only claims you ever located in Alaska? A. I have located others.

Q. Where?

A. Big Missouri on Seymour Canal, Dick Johnson and I.

Judge WINN.—That is all.

Mr. HELLENTHAL.—That is all.

The COURT.—I understood you to say that you understood the rule to be in force at the time that when a man wanted to appropriate [878—728] water he had ten days to put up a location notice, and twenty days afterwards to commence work?

A. That was my understanding.

The COURT.—Had ten days to put up a notice—ten days from what?

A. From the time—I mean he had ten days from the time he had his notice up, his location notice, he

(Testimony of C. A. Fox.)

had ten days to get that on record.

The COURT.—That isn't what you said.

Q. That is what I meant to say.

The COURT.—That is all.

Recross-examination.

(By Judge WINN.)

Q. Do you know how many water location notices have been posted in the Harris Mining District where the locator has complied with the law in regard to recording his notice within ten days from the time he posted it?

A. I don't know; I don't know if he ever complied with the law or not.

Q. You don't know that that rule has ever been complied with, do you?      A. No.

Q. You don't know whether the rule that he has to commence work on his water right within twenty days has been complied with on any water right, do you?      A. No.

Q. You don't know whether there has been any forfeiture of any water right by reason of the man not complying with these rules?      A. I don't know.

Judge WINN.—That is all.

(WITNESS EXCUSED.)

(Whereupon Court adjourned until 10 o'clock tomorrow morning.) [879—729]

MORNING SESSION.

August 1, 1914, 10 A. M.

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal MIKE

HUDSON, who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Mike Hudson, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is M. Hudson?

A. Mike Hudson; yes, sir.

Q. You live at Douglas City? A. Yes, sir.

Q. Do you know where the Harris Mining District is, Mr. Hudson?

A. Well, I think I do; I don't know just where the boundaries are, but I know what is called the Harris Mining District.

Q. Do you know where the properties of the Alaska-Juneau Gold Mining Company and those of the Ebner Company and adjoining claims are in Silver Bow Basin? A. Yes, sir.

Q. Those properties are all in the Harris Mining District, are they not? A. Yes, sir.

Q. When did you come to the Harris Mining District, Mr. Hudson? A. Twenty years ago.

Q. What has been your business?

A. Well, mining mostly.

Q. Both prospecting and you have operated properties? A. Yes, sir.

Q. Acted as superintendent of properties?

A. Yes.

Q. Do you know what the laws and rules, local laws and rules of the miners in force and observed by the miners of the Harris [880—730] Mining District

(Testimony of Mike Hudson.)

relating to the appropriation of water and the acquisition of water rights have been during the time that you have lived in the Harris Mining District for the last twenty years?

A. When you ask me if I know, I know in a general way—I know what they are in a general way.

Q. Have you heard the rules read in evidence here from the Minute-book of the Harris Mining District relating to the appropriation of water? A. Yes.

Q. You were in the courtroom when they were read? A. Yes.

Q. How do those rules as they were read into the record compare with the rules that were generally observed by the miners of the Harris Mining District relating to that matter—that is to say, the appropriation of water and the acquisition of water rights, during the twenty years you have lived here, as to whether they are the same, or whether they are different? A. They are about the same, yes.

Q. And the observation of those rules has been general?

(Not answered because of objection.)

Q. Was the observation of those rules general by the miners, or otherwise? A. They are general.

Q. Generally followed? A. Yes.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. Mike, you live on Douglas Island, don't you?

A. Yes, sir.

Q. When was the first time that you ever saw the

(Testimony of Mike Hudson.)

miners' rules and regulations which Mr. Hellenthal referred you to? [881—731]

A. Why, I don't know just how long ago, but some time shortly after Mr. Delaney had got those printed; I don't know whether they are the same ones that were read here or not, but in substance they were about the same the first time I ever saw them.

Q. Where did you get them?

A. I got a copy from Mr. Delaney.

Q. You got a copy out of Delaney's office?

A. Yes, sir.

Q. When was that?

A. I don't just remember how long,—it was about 1898.

Q. Before 1898 you didn't know anything about the existence of any such rules or any matter pertaining to any organization known as the miners of the Harris Mining District, did you?

A. No, not to speak of; didn't know anything about them, no.

Q. Now, when you say that these rules and regulations have been generally observed, Mike, do you mean that they have been generally observed throughout the length and breadth of the Harris Mining District?

A. All I know is districts where I have been—districts where I have been they have been observed.

Q. What part of the district have you been in?

A. Mostly on the Island—that is about the only place in the Harris Mining District.

(Testimony of Mike Hudson.)

Q. That is on Douglas Island? A. Yes, sir.

Q. Where the Treadwell Company has its mines?

A. Yes, sir.

Q. That is the mine that Mr. Kinzie is superintendent of?

A. Why, yes; that mine is on the Island, yes.

Q. How many times have you heard these discussed among the miners on Douglas Island?

A. You mean this question?

Q. Yes. [882—732]

A. Oh, I don't know. You mean this question that is coming up now?

Q. Yes, about any miners' rules and regulations?

A. I don't know; I have heard it a great many times from time to time—I couldn't say every time or how many times. Every time there was a question of water right comes up I heard it discussed.

Q. Do you know whether or not all the people on Douglas Island complied with this rule?

A. No, I don't.

Q. Have you ever located any water yourself?

A. Yes, sir.

Q. Where did you locate it?

A. I located on Nevada Creek.

Q. On Douglas Island? A. Yes, sir.

Q. Did you locate that in your own name?

A. I located it for the company I was working for.

Q. What company is that?

A. Alaska-Treasurer Consolidated mines.

Q. When did you make that location, do you know?



(Testimony of Mike Hudson.)

A. I don't know just what time—seems to me it was ten years ago.

Q. Have you seen that water location lately?

A. I don't know; I seen it something like three or four years ago.

Q. Did you have that water location notice recorded yourself?

A. I don't remember whether I did or not; I think that I did; I am not sure.

Q. Are you sure it was ever recorded?

A. Yes, sir.

Q. And is in the name of the Alaska-Treasurer Consolidated Mines? [883—733] A. Yes, sir.

Q. Do you remember the year it was recorded in?

A. No, I don't, but I know it was sometime after it was located—I don't know just how long.

Q. Did you locate for the Alaska-Treasurer Consolidated Mines by Mike Hudson, Agent?

A. Yes, sir.

Q. You recorded it yourself?

A. I don't know whether I did or not.

Q. You don't remember what time it was recorded? A. No, I don't.

Q. You don't remember what time it was recorded with reference to the time it was posted on the property?

A. No, I don't; of course, I think it was recorded shortly afterwards; I couldn't say now—I don't remember.

Q. Do you have any remembrance of bringing it over here and having it recorded yourself?

(Testimony of Mike Hudson.)

A. No, I don't remember; I don't remember whether I brought it over myself or not.

Q. Did you ever see a certified copy of it anywhere? A. No, I never did.

Q. Didn't you see it over here on the record books? A. No, I never done that.

Q. Then you couldn't swear positively as to whether or not the notice was ever recorded?

A. No, I couldn't swear positively that it was, but I believe it was—I have every reason to believe it was.

Q. I wish you would state to the Court, Mike, what you understand these rules and regulations that Mr. Hellenthal asked you about contain—just state to the Court what they contain.

A. My understanding of them is, when you locate a water right the first thing is that you must in a short time make some [884—734] natural use of it—locate it for some particular purpose of course, that he wants the water for.

Q. Well, what else?

A. There is not much else about the rules.

Q. You know the posting of the notice is usually resorted to? A. Yes.

Q. And that you commence work on it as soon as you can after posting the notice—that is, within a reasonable time you must commence some work?

A. Yes, sir.

Q. And then prosecute this work with diligence to completion? A. Yes, sir.

Q. Now, that is all, Mike, you know particularly

(Testimony of Mike Hudson.)

about those rules and regulations, isn't it?

A. Why, that is all I know except what I have read there, of course.

Q. And in your water location for the company over there you followed out this rule that I have mentioned? A. Yes, sir.

Q. You have never known, since you have been here, any difficulty over water rights on Douglas Island, or anywhere in the Harris Mining District, referred to any organization known as the Miners' Organization for settlement, have you?

A. No, sir; I haven't.

Q. You have never known any difficulty to grow out of or under the miners' rules and regulations about one man filing a location on any particular creek and another party filing a location on there afterwards, and any forfeiture claimed by the party who first filed by reason of not having complied with any rules and regulations—You have never known of any case of that kind to be referred to the miners, have you? A. No, sir. [885—735]

Q. And you have never known any such difficulty to come up among any of the miners, particularly on Douglas Island, have you? A. No, I haven't.

Q. Your knowledge has been limited to Douglas Island in this recording district, has it, Mike?

A. Yes; in this District.

Q. Did you mine anywhere before you came to Alaska? A. In the State of Washington.

Q. Did you ever do any mining in California.

A. No, sir.

(Testimony of Mike Hudson.)

Q. What did you do with the copy of rules and regulations you say you got from Judge Delaney's office?

A. I imagine I have got those yet, although I haven't seen it for some time—I imagine I put it away.

Q. When do you remember of having seen it last?

A. I haven't seen it—I don't remember, maybe six or seven years.

Q. You haven't made any location notices since the one you made on Nevada Creek? A. No, sir.

Q. Mike, have you any data at hand by which you could be sure about whose name this water right on Nevada Creek was located in?

A. Oh, there is no question about whose name it was located in, because I remember that in particular.

Q. And that was the Alaska-Treasurer Consolidated Mines, by Mike Hudson, Agent?

A. Yes, sir.

Q. And you think that was in what year?

A. I don't remember the year, but it is sometime about ten years ago.

Q. You don't know what became of the notice?

A. Oh, yes; the notice was nailed up on a tree at the place we [886—736] were taking the water out of the creek.

Q. I know, but the one that was recorded, what became of it afterwards?

A. I don't know myself; likely amongst the company's paper, I don't know.

(Testimony of Mike Hudson.)

Q. Do you know whether you can find it by search or not?

A. I couldn't have any idea because I have never kept track of those things; they have been turned over to the company.

Q. Do you know substantially what the notice contained in the body of it? A. Yes, I do.

Q. What did it have, as well as you remember?

A. Well, the substance of it was that we started at the point where the notice was nailed on the side of the creek, and followed there so many feet—I don't remember now—so many feet by a flume in a certain direction, and leaving that flume so many feet to a ditch at the point where we expected to use the water.

Q. Do you know what time after the posting of the notice you commenced work on the water right?

A. We were working on the water right the day I nailed the notice up.

Q. You commenced work before you put it up?

A. Yes.

Q. Did you ever hear the question discussed as to whether or not those rules and regulations were in force or adopted among the miners?

A. Yes, if you locate water you have to use it—that is the only talk I have heard on it.

Q. That is the practice you are testifying on?

A. That is the general understanding.

Q. You have to go to work with diligence to put the water to use? [887—737] A. Yes.

(Testimony of Mike Hudson.)

Q. That has been a conceded practice in the Harris Mining District? A. Yes, sir.

Q. And that is about as far as you know of the law in regard to the acquisition of water?

A. Yes; that is as far as I ever had any reason to know or find out.

Q. Are you sure that a man named Marks and somebody else didn't locate that water right of yours?

A. They located at a point sometime before that, but afterwards we decided we wanted to take it from another point than where they had it located and made another location, because they didn't take it from the point we expected to use it from.

Q. You put up your notice, though?

A. Yes, sir.

Q. Did you state in it the number of miners' inches you intended to take?

A. I am not sure that it stated so many miner's inches; I could not say at this time—I am not sure of it.

Q. Did you ever get any water right from a man named Fox over there on Nevada Creek?

A. No, sir.

Q. There isn't any other company operating on Nevada Creek on the lower side of Douglas Island except your company, is there, Mike—mining company? A. Nowhere, no.

Q. Did you ever know of Fox claiming any of the water on Nevada Creek?

A. Well, above our company I don't know—he



(Testimony of Mike Hudson.)

may have claimed it for all I know.

Q. Did Fox ever transfer any water rights to you?    A. No. [888—738]

Q. Your water locations there were brought about just as you were testifying to here, when Marks and somebody else located some water rights some place on the creek and you got their rights?

A. Yes, sir.

Q. And then you wanted to take the water out at another point on the creek and then you went to work for that reason and put up another water location?    A. Yes, sir.

Q. And had it signed in the way you have described here?    A. Yes, sir.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Hudson, the record shows a location made by the Alaska-Treasurer Consolidated Mining Company, or manufacturing company, I don't know which, of 400 inches on Nevada Creek, August 2, 1904, the notice was located the same day in 1904—is that the location you referred to?

A. I think it was about that time; I don't know of any other location notice which I had for the Alaska-Treasurer Consolidated Mines.

Q. That is the location you referred to?

A. Yes, sir.

Q. Now, in making that location you say you stated the point where you took it out of the creek?

(Testimony of Mike Hudson.)

A. Yes; that was where the notice was posted.

Q. And stated the place where you were going to use the water?      A. Yes, sir.

Q. And the use to which you were going to put it?

A. Yes, sir.

Q. As well as the quantity of water in miner's inches you were [889—739] going to take?

A. Yes, sir.

Q. Judge Winn has been asking you about the discussions you remember about this thing and has asked you whether the only things necessary were the posting of the notice, the commencing of the work and the prosecution with due diligence of the work—what do you say as to the recording of the notice?

A. It is generally understood it had to be recorded.

Q. Anything the notice had to contain, did the miners' rules describe that?

A. Yes; of course, I don't really know all that there is in the miners' rules, but my impression is that it must contain the amount of water you expect to use, where you expect to use it, and for what purpose—that is as far as I know.

Q. That was equally in force with the posting of the notice?      A. Yes, sir.

Q. The Judge Delaney that you referred to from whom you got this pamphlet is the same Judge Delaney who, in his lifetime, owned an interest in the mines up here in the Basin, the Apex Royal and Enterprise mines, or do you know about that?

(Testimony of Mike Hudson.)

A. I don't know if he had an interest in them or not.

Q. Do you know of any mining claims that Judge Delaney had? A. I don't know of any.

Q. Do you know of an interest that Judge Delaney had in some property at Sheep Creek?

A. I don't know of any interest he had at all in mining.

Q. I hand you a little pamphlet, marked Plaintiff's Exhibit No. 33, and ask you to look at it and see if it is the same pamphlet Judge Delaney gave you, as you testified in response to Judge Winn's question?

A. Yes.

Q. That is like the one you got from Judge Delaney?

A. Yes, sir; that looks like it. [890—740]

The COURT.—Mr. Hudson, I want to ask you a question or two: You say that Judge Delaney gave you a pamphlet similar to that?

A. It looks like it, as near as I can remember; I haven't seen it for six or seven years—it seems to me it was like that.

Q. And you say that the rules contained in there, so far as the location of water is concerned, were in force when you came here?

A. Yes; that is, generally they were.

Q. You are a miner? A. Yes, sir.

Q. And wanted to be informed as to how to locate claims? A. Yes.

Q. And you were told by this mining attorney and owner of mines that those were the rules which were

(Testimony of Mike Hudson.)

in force at that time?

A. That was the only rules that I could find.

Q. Did you afterwards locate some water rights?

A. I did.

Q. Did you locate some mines?      A. Yes, sir.

Q. Did you locate the mines in accordance with those rules, or in accordance with the law?

A. I located the mines and followed generally the form of location notice found in stationery stores, and I also got instructions as to whether it was a proper form or not, according to the laws of the United States.

Q. What I am trying to get at is this, Mr. Hudson—were those mining rules that are contained in this pamphlet—I mean in the way of locating mines, irrespective of water rights, but in the way of locating mines—were they in force at the time you came here?

A. I don't believe so, not at the time I came here; they had extended the United States mining laws for locating claims, and my impression is that was the way the mining claims were [891—741] at that time located.

Q. I want to know if you wish to be understood as saying that the mining rules were not in force, but that the water rules were in force?

A. That is the only water rules I know anything about; I don't know anything about any other water rules.

The COURT.—That is all.

(WITNESS EXCUSED.) [892—742]

(Testimony of Mike Hudson.)

The plaintiff, to further maintain the issues on its part, called as a witness in rebuttal GEORGE MILLER, who then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of George Miller, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you live, Mr. Miller?

A. In Juneau.

Q. How long have you lived here?

A. Twenty-seven years.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. You have lived in the Harris Mining District for 27 years? A. Yes, sir.

Q. And during that time you have followed mining in a way? A. Oh, some.

Q. You have now some claims in Silver Bow Basin, haven't you? A. Yes, sir.

Q. In the Harris Mining District, have followed more or less mining during all of that period?

A. Yes, sir.

Q. Now, Mr. Miller, do you know what the local rules and customs of the miners relating to the appropriation and acquisition of water rights have been in the Harris Mining District during the 27 years that you have lived here, so far as they were observed by the miners and enforced by the miners

(Testimony of George Miller.)

of the district—just answer the question, Mr. Miller, whether you know what the rules were since you have been here? [893—743]

A. I never read the rules—just what I heard associated with miners here in the same business; I never located any claims in this country, but I am interested in claims; I am interested in water rights but never located any.

Q. You have been interested in water right claims?

A. Yes, sir.

Q. Do you know what the rules were with reference to the appropriation and acquisition of the rights of water?

A. I guess those were the rules.

Q. The question I am asking now is whether you know what they were? A. Yes, sir.

Q. Now, did you hear the water rules read here into the record from the minutes of the Harris Mining District here yesterday? A. Yes, sir.

Q. How do those rules as read into the record in your presence from the minute-book of the Harris Mining District compare with the rules that were in force here during the time that you have lived here—during the 27 years—are they the same or are they different?

A. Well, the interest I had in the water rights, we followed the rules—my partners located it, I think.

Q. Were those rules as read in evidence the same as they were in force here during the 27 years that you have lived here, or are they different?

A. They are the same.



(Testimony of George Miller.)

Mr. HELLENTHAL.—You may cross-examine.  
[894—744]

Cross-examination.

(By Judge WINN.)

Q. What do those rules state, George?

A. Well, they locate the water, and record it, and get to work and use it—that is what we thought.

Q. Did you make any location notice yourself of water?     A. No.

Q. Your partner made a location?     A. Yes.

Q. Who was your partner, then?

A. This was in Porcupine.

Q. Oh, in Porcupine?     A. Yes.

Q. Well, you followed the Harris Mining District rules when you located it up in Porcupine?

A. Yes, on the same line like what you had in that book here.

Q. You thought that those rules were in force in that part of the country too, did you?

A. Well, I never heard no kick about them.

Q. Do you know where the boundary lines of the Harris Mining District are, George?

A. Oh, I guess somewhere near Taku and Auk inlet.

Q. Who did you say your partner was that located the water up there?

A. That was Jack Bigelow, Al Smith and Ned Whitsaker.

Q. Where did you record those notices?

A. They were recorded in Porcupine, I think.

Q. And what you intend to state to Mr. Hellen-

(Testimony of George Miller.)

thal was, then, that these rules and regulations were followed in the Porcupine country? [895—745]

A. Yes.

Q. You never had anything to do with the location of water rights down around Juneau? A. No.

Q. I will ask you if you know whether or not Porcupine is in a different district from the Harris Mining District? A. Yes.

Q. And you were testifying to the customs that prevailed up in that part of the country, were you.

A. Yes.

Q. And that was all you were testifying concerning A. Yes.

Judge WINN.—We move now, if the Court please, to strike out the testimony of the witness as being incompetent and immaterial.

Mr. HELLENTHAL.—Let me ask the witness a question.

Q. (By Mr. HELLENTHAL.) The rules to which you have testified, George, the little book that you said you had with you—was that the book that contained the rules of the Harris Mining District?

A. I never had that book; I didn't have no book.

Q. Well, you have testified that you knew the rules of the Harris Mining District as well as the Porcupine District?

A. I heard the book read here yesterday, and that is about the same as was up there.

Q. The same as up where?

A. Up in the Porcupine.

Q. Did you know the rules, George, relating to

(Testimony of George Miller.)

the Harris Mining District, as well as the Porcupine District, not from your own experience in locating water rights but from conversations with miners and otherwise? [896—746] A. Yes.

Q. And those rules as read in evidence are the rules as you know them to have existed in the Harris Mining District? A. Yes.

Cross-examination (Cont'd.).

(By Judge WINN.)

Q. You never did read any of these little pamphlets that had these rules as laid down in that book until yesterday, did you, George?

A. Yes, yesterday.

Q. That was the first time you saw it?

A. Yes.

Q. You never had occasion to look up the rules and regulations as to locating water rights in the Harris Mining District—you had no necessity for looking them up, did you?

A. I always associated with miners and prospectors, and it is kind of a common conversation to tell what the rules are.

Q. When you had that common conversation, was that conversation about these rules that had “De-laney” written on them.

A. Used the old miners’ rules—the law we have here—I don’t know who got it out.

Q. When did you ever have a conversation with anyone, George, about these rules—that is, prior to say a week or ten days ago, when did you ever have any conversation with anyone about them?

(Testimony of George Miller.)

A. I had a conversation here in the courthouse and around the hotels in the lobbies.

Q. Around the courthouse and in the hotel lobbies—when did you hear any talk about it there?

A. Oh, for the last few days. [897—747]

Q. Since this case came on for trial?

A. Yes, I heard it in Mr. Hellenthal's office.

Q. You have been in Mr. Hellenthal's office?

A. Yes, sir.

Q. Were some of the other witnesses who have testified in his office? A. Yes, sir.

Q. And you people have been discussing it over and over there?

A. Well, I don't know if we were discussing it.

Q. Now, George, when and where was it before this case came on for trial, that you had any conversation with anyone pertaining to the water location rules—the water location rules and not the rules for staking out claims?

A. Oh, I heard them for the last 27 years around the hotels, when there were miners and prospectors stopping there and I talked with them and I heard it once in a while.

Q. Have you heard any talk about it in the last 10 or 12 years? A. Oh, yes.

Q. About what rules? A. Mining rules.

Q. Principally about mining rules, wasn't it?

A. Mines, and water and placer mines and general talk.

Q. They discussed matters as to what the law was? A. Yes, we heard lots of them talked.

(Testimony of George Miller.)

Q. Some would contend for one rule and some would contend for another rule, wouldn't they?

A. Well, I guess about the same about the location notices.

Q. Have you read these rules over since you were called upon as a witness in this case?

A. No, sir. [898—748]

Q. You have never seen the rules to read them at all? A. Just what I heard here.

Q. Now, before you heard them read in the court-room, you didn't know what the rules contained, did you?

A. What I know about those rules is about the location notice, and how many inches you want, and recorded them, and get to work—that is the rules we followed.

Q. After you have posted your notice you have to commence work within a reasonable time, don't you? A. Yes.

Q. And carry your work on? A. Yes.

Q. How long was it after you located your claims in Porcupine that you recorded your notice, do you remember?

A. Oh, yes, it was recorded right away.

Q. Did your partner do it or did you?

A. It was recorded before I got there, they were working on the water already.

Q. That was in Porcupine? A. Yes.

Q. You were not up there when the notice was put up? A. No.

(Testimony of George Miller.)

Q. You were not there when the notice was recorded?     A. No.

Q. And you don't know anything about that other than what your partner told you?

A. Yes, and I went to work up there.

Judge WINN.—That is all.

(WITNESS EXCUSED.)     [899—749]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal GEORGE A. HOWE, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of George A. Howe, for Plaintiff (in Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Captain, you live in Juneau?     A. Yes, sir.

Q. Do you know where the Harris Mining District is?     A. Yes, sir.

Q. How long have you lived in the Harris Mining District?     A. Steady about 15 years.

Q. Living here off and on before that?

A. Yes, sir.

Q. What has been your business in the last 15 years, Captain?

A. Mining principally—mining and prospecting.

Q. Do you know what the miners' rules are that have been in force and observed by the miners during the past 15 years while you have lived in the district?



(Testimony of George A. Howe.)

A. Well, since I have been here I have always—

Q. Answer the question—you know what they were? A. I do; yes.

Q. Now, the question is what were those rules?

(Objection and question not answered.)

Q. Now, Captain, as you remember the rules in force during the time that you have been here relating to the appropriation of water, what were those rules—tell the Court in a general way as near as you remember the rules—what was the first thing that must be done when you acquired water? [900—750]

A. The first thing was to locate, and so you would put your notice up that you were going to take this water out.

Q. Now, that notice—did it have to contain anything particular, as you remember?

A. According to the way we understand it and according to the rules that you have read here,—

The COURT.—Don't say according to the rules you have read—I want to know what was the rule.

A. We would post our notice on a stake that we wanted to take up the water rights, then so many days afterwards we would start to work to appropriate that water.

Q. How many days?

A. Well, so many inches to whatever we thought we would have to need for to work the mine with.

Q. That is the quantity of water you would take?

A. That is the quantity of water we would take, but we had to do extra work on that and still con-

(Testimony of George A. Howe.)

tinue as long as we could, otherwise we had no right to that water.

Q. How soon did you have to commence actual work?

A. About 30 days, had to start in to do actual work after the notice was posted, after you posted that notice, you had to do actual work on that to hold that water.

Q. That is your recollection?

A. That is the way I have always understood it amongst all of us.

Q. Captain, did you have to record that notice?

A. Sure, it had to be recorded the same as we had to locate our mines, the same way, and record them.

Q. *Have* long did you have to record the notice?

A. For a water-right notice at that time we only had 30 days to do it in. [901—751]

Q. How many days to record it?

A. Inside of 30 days.

Q. Do you remember, Captain, what the notice had to contain—state how much water you took and what else?

A. Sure; how much we wanted, how many inches we needed for our work.

Q. State anything else in the notice that you remember.

A. I don't know that I know of anything more than where we wanted to take that water out of the creek.

Q. And where you wanted to use it?

A. Where we wanted to use it.

(Testimony of George A. Howe.)

Q. What you are giving us now is your recollection of the rules, is it?     A. Yes, sir.

Q. If you were going to locate a water right you would go to the rules and see if you were right?

A. Yes, sir.

Q. You would do that, Captain?     A. Yes, sir.

Q. And those notices were recorded in the Recorder's office?     A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. How many times did you ever go to the Recorder's office to look at these miner's rules?

A. I have been to the Recorder's office and seen several.

Q. Several locations of water that you have recorded?

A. I never recorded any water, but the minute I do, I shall expect to do the work according to law.  
[902—752]

Q. Then, you haven't had any occasion in the past to look up what the rules were?

A. Not lately I haven't.

Q. The first time you ever heard these rules read was in the courtroom?

A. It has all been spoken to us, but not the laws read to us, but us miners have all understood it to be that way.

Q. You never have taken up any water right, have you?     A. I haven't; no, sir.

(Testimony of George A. Howe.)

Q. Your understanding was that when you did take up water you posted the notice that you described to Mr. Hellenthal, and commenced work within 30 days and had the notice recorded in 30 days? A. Yes, sir; certainly.

Q. And you thought the same rules that regulated mining claims were the same laws that regulated water rights?

A. That is the way I understood it.

Q. You have always understood it that in locating mining claims or water claims, that you absolutely had to post up your notice and record it?

A. Yes, sir.

Q. That is, 30 days after posting you had to record?

A. No; in regard to recording our claims, we have 90 days—a good reasonable time; now, if we are in the district here when we get up our notice we're supposed to do that as soon as we can instead of the 90 days, but if we are outside where we cannot get back, that gives us the 90 days to get our record in.

Q. You understand that to be the law from discussing the subject with many miners and locators?

A. I do; yes, sir. [903—753]

Q. Now, when do you remember before this trial was going on, of anything having been said about water location notices—when do you remember to be the last time which any conversation with anyone about water location notices was had by you prior to the coming on for trial of this case?

A. Quite a good many times.

(Testimony of George A. Howe.)

Q. About water rights? Now, you have never taken up any water rights?

A. That don't signify that we can't talk about these things because we haven't taken up any.

Q. I am asking you when and where was the last time you had any conversation about water rights before you were subpoenaed to come on this case?

A. Since this case has come up we have had a great many talks—it interests us all.

Q. That is the principal time that you heard the discussion of *of* water rights, isn't it? A. Yes.

Q. When, before this case was talked of do you remember that you ever had any talks about water rights?

A. Well, I have had talks here with several of the men—several of us have met together and talked about this water rights business.

Q. That is since the trial of this case—I mean prior, before that time, and before you ever heard anything about this case, when and where did you ever talk about water rights before?

A. I have talked about water rights with Mr. Wagner; I have seen where Mr. Wagner posted his notice on Salmon Creek, and I think it was about two or three years ago.

Q. Did you go all over this matter of how he had to do it, [904—754] and so forth, with him?

A. Well, it is all in his notice, he posted it on the point there at Salmon Creek.

Q. Did you talk with John Wagner in regard to what he had to do in order to get the water?

(Testimony of George A. Howe.)

A. We talked about it, how many inches he took out—I think where he has his dam now—he told me he was going to put a dam in there.

Q. What else did you talk to John Wagner about?

A. With John Wagner?

Q. Yes.

A. I have talked mines and mining with John Wagner—worked for him on the Boston group.

Q. State anything that was said about water rights—I don't want anything about mines?

A. *I* has been quite a while ago and I don't remember the very words that we said about it when we had the conversation, which was about water for the Salmon Creek mine.

Q. Who else did you have any talk with about water locations, Captain? You have given one man, now let's have another one?

A. Well, I don't know; I guess perhaps likely I have talked with Mr. Hellenthal.

Q. I didn't mean Mr. Hellenthal or any of the parties who are here?

A. I met him the other day and talked with him just the same as I would with you.

Q. That is since you are here in this trial you had this conversation? A. Yes.

Q. And was your conversation with Wagner before you knew anything [905—755] about this case? A. Sure.

Q. Who else did you have any conversation with before you knew anything about this case?

A. I had a talk with Mr. Waylock on Admiralty



(Testimony of George A. Howe.)

Island about taking up water rights, whether it was worth while to take up water rights; we didn't do enough work to prove whether it was worth while, and we gave it up.

Q. So that was about the extent of your conversation, Captain? A. Yes, sir.

Q. Do you remember anyone else that you talked with? A. Not that I know of.

Q. You didn't take up any water rights down on Admiralty Island, did you? A. No, sir; I did not.

Q. You have talked over these matters with Mr. Hellenthal quite a considerable—these matters of the local rules and regulations—since you were subpoenaed as a witness, haven't you?

A. No; no, sir.

Q. Did you talk over with the other witnesses about them?

A. No; I don't think we have since we come here in the courthouse; before that we had, but since the trial, no, sir; I don't think we had any talk since we come here.

Q. Now, you have given about all the conversations you remember of having with anyone about water rights in Alaska?

A. I think I have, Judge; yes, sir.

Q. Have you followed mining to any extent?

A. I have followed mining now for at least 18 or 20 years.

Q. Where have you been mining?

A. I have mined in the Yukon, I have mined in Nome and here. [906—756]

(Testimony of George A. Howe.)

Q. How long have you been mining in and about Juneau?     A. About the last 12 or 15 years.

Q. Your work has been—

A. Working mines and prospecting, and working them.

Q. That is what is has consisted of?

A. Yes; that is what I am doing now.

The COURT.—Captain Howe, I want to ask you if you can tell me what is understood by this rule among the miners—what has been understood by this since you have been here; “Water privileges may be located, but such location shall not conflict with the interests of river miners”?

A. Such locations shall not conflict with river miners?

The COURT.—With the interests of river miners.

A. I presume that would mean that we wasn't to be allowed to dump anything in on to anyone else's claim to injure them.

The COURT.—There is nothing about dumping in this—“Water privileges may be located, but such location shall not conflict with the interests of river miners”?

A. Well, not to conflict with river miners—I don't exactly understand that, Judge.

The COURT.—What did the miners of the Harris Mining District understand by that?

A. I will tell you, I presume in this way—what you want to find out is this: I think that when we appropriated water as I have always understood it in the Yukon, but not here—wherever I have been,

(Testimony of George A. Howe.)

we take that water out, and we use that water, and we have to turn it back into the same stream, and we turned it back, and that is what I have always done ever since I have been mining.

The COURT.—That is your understanding of the rules and customs of the Harris Mining District, is it? [907—757] A. Yes, sir; the mining rules.

The COURT.—That where a man takes water out of the stream he has got to put it back?

A. They turn it back into the same stream below so that the next man can use it; that is what we have always done, and I can tell you where I have done it.

The COURT.—I don't care about that; I want to know what was the understanding and custom among the miners of the Harris Mining District?

A. That is the custom as I have always understood it, was in case I took the water out I had to turn it back into the same stream I took it from.

The COURT.—And unless the party taking the water out of the stream returns it to the stream, he has no right to it himself?

A. No sir; that is the way I understood it, always.

The COURT.—I didn't mean the way you understood it yourself, but I mean what do the miners of the Harris Mining District understand about that?

A. That is universal amongst us.

The COURT.—In the Harris Mining District and elsewhere? A. Yes, sir.

The COURT.—You have got to put the water back into the stream?

A. Back into the creek I took it out of; I did that

(Testimony of George A. Howe.)

in little , your Honor, and by the time some of us got it, it was pretty thick looking water—looked like mud; we all did that, put it right back in the creek. [908—758]

The COURT.—Well, Captain, have you thought about that very much?

A. Well, I always thought about it; I have been bothered a good deal since I have been here, and it made me mighty disgusted with the way we have been treated, the miners and prospectors—I have made locations here and come here in the town to record—

The COURT.—What I want to know is did you understand the custom and rules of miners in the Harris Mining District to be that a man could not take water away from the creek and not return it back into the creek?

A. That is the way I understand this water custom.

The COURT.—The custom of the Harris Mining District?

A. As I understand, and as the rest of us, always understood that, we had to do that, and that is as far as I can tell you.

The COURT.—Suppose a man had a mining claim three miles from Gold Creek, either side, and he wanted to use the water of Gold Creek to wash his gold out at this place three miles from Gold Creek, couldn't he take the water out of the creek according to the miners' custom?

A. That is a pretty hard question to answer, Judge, but according to what I have told you that

(Testimony of George A. Howe.)

when we used the water, if we use it from Gold Creek and we were working on Salmon Creek, of course according to our law we would have to put it back in there again.

The COURT.—Couldn't take it away at all?

A. I don't think you could—I don't know.

The COURT.—That is your understanding of the rules, is it? A. That is my understanding.

The COURT.—That is your understanding of the rules and the [909—759] customs of the Harris Mining District?

A. Yes, sir; I have located claims a good ways away from here and it has always been recorded in the Harris Mining District.

The COURT.—Well, now, Captain, you say that the rules and customs of the Harris Mining District require when you located water you should record your location within 30 days? A. Yes, sir.

The COURT.—Now, aren't you mistaken about that—didn't you have 60 days to record your water claim?

A. Well, I hardly think that; of course a good many of us would take it upon ourselves the sooner we do this thing the better it is for us, but as I say, if we are away—quite a ways away from here and there is no transportation to get back, we have 90 days for the recording of our claims, and I suppose it would be the same with the water, if we are away down here say 90 miles from here, sometimes we cannot get back here in time.

The COURT.—I am talking about the Harris Min-



(Testimony of George A. Howe.)

ing District. A. I understand what you mean.

The COURT.—Aren't you mistaken about having to begin work within 30 days—weren't you allowed 90 days?

A. No, sir; I think it is 30 days—that is, the water.

The COURT.—You are quite sure it is 30 days?

A. Yes; I am quite sure of that.

The COURT.—You are testifying to your recollection what the mining laws and customs were in the Harris Mining District? A. Yes, sir.

(Questions by Mr. HELLENTHAL.)

Q. In relation to taking the water away from the creek, that applied to placer miners on the creek below, didn't it? A. Yes, sir. [910—760]

Q. It wouldn't have any effect on taking water for power purposes, and for the operation of a mill, away from the creek, would it? A. I couldn't say.

Q. There was no custom among the miners on that subject? A. Not that I know of.

Q. The only thing you know of is that the lower placer miner may have water to wash his dirt with as against one who would take it from some other creek?

A. I don't know, sir; I said before I think that would be a question that would have to be decided, I should judge, in court; I wouldn't dare to say that.

Q. There is nothing in the customs of miners or in the rules of miners in this district that would prevent a user of water from taking the water away from the creek after he used it, for power purposes in connection with quartz operations, is there?



(Testimony of George A. Howe.)

A. Well, if you would like to have me answer that in my own way—

Q. You don't know of anything in the rules against that, do you?

A. Well, as I say, if you would allow me to answer that in my own way I will do so, if the Court would like to have me.

The COURT.—Very well, answer it in your own way.

A. Why, I would say in this way, that if the water was taken out of the creek for other purposes, taken away from the creek and diverted in any other direction, and it did not interfere or conflict with the miners below, but they would have plenty of water for to do their work, and it wasn't taken away from them and created an injury to them, I would not see why it could not be.

Q. Under the miners' rules, you may take the water no matter [911—761] what you want to use it for?

A. Provided that the miners below gets plenty of water for their use, I don't see why there would be anything against it.

Q. Now, Captain, the written rules that have been read here provide for the recording within ten days instead of 30?

A. You have 10 days to post your notice in and then inside of 30 days we had to do our work—commence actual work on the ditch in taking that water out.

Q. You don't understand my question, Captain—

(Testimony of George A. Howe.)

the written rules that have been read here from the minutes of the Harris Mining District provide that the notice must be recorded within 10 days after it is posted—are you sure you are not mistaken as to the time required—your testimony was, I think, that it was 30 days—could you be mistaken as to that, Captain?

A. I would like to have you ask that over again.

Q. The question I am asking is this: The written rules that have been read in evidence here provide that the notice should be recorded within 10 days after it is posted; as I recall your testimony, you said it must be recorded within 30 days after it was posted? A. Yes.

Q. Could you be mistaken as to that, that it was 10 days instead of 30 days?

A. Well, I might be mistaken about that; I couldn't say.

Q. You are just testifying from your recollection of what the written rules were? A. Yes, sir.

Q. And you might be mistaken? A. Yes, sir.

[912—762]

Mr. HELLENTHAL.—That's all.

(Questions by Judge WINN.)

Q. You never did see these rules or know anything about them—that is, the contents of them, until you heard them read here in the courtroom?

A. Not the rules as I heard them read, only as I understood from amongst the miners and amongst those I have talked with—that is what they told me and they have read these rules.

(Testimony of George A. Howe.)

Q. The custom, as you have understood it, up to the time you came to the courthouse here—the custom as you have understood it in discussing it with the miners, and so forth, is that they did have 30 days to record the water locations? A. Yes, sir.

Q. Before you came into this case that was your understanding? A. Yes, sir.

Q. (By Mr. HELLENTHAL.) However, you know there were written rules upon the subject in the Recorder's office that would cover that subject?

A. I know there were written rules, but I never saw them, that is what I gathered from the older men that I talked with; I haven't seen any of them and haven't read them in fact.

Q. If they provide 10 days, that would be the time within which the recording had to be done?

(Question not answered because of objection.)

Q. Captain, you know that the rules that govern in appropriating the water have been reduced to writing and recorded in the recorder's office and those were the rules according to which the miners went?

(Question not answered because of objection.)

Q. What did the miners understand—from what you know about the miners and from your conversations with the miners as to [913—763] what governed in those cases, whether it was the written rules that were recorded in the recorder's office or not—whether those would be the things that would govern?

(Question not answered because of objection.)

Q. Do you know, Captain, where the rules were

(Testimony of George A. Howe.)

recorded or kept—where a record of the rules of the Harris Mining District were kept?

(Question reframed because of objection.)

Q. Do you know where that record was kept, Captain?

The COURT.—I don't think that is the proper question, Mr. Hellenthal—I will ask the question.

Q. Do you know whether or not those rules were ever recorded anywhere?

A. Why, we have always understood that they were recorded here in the Harris Mining District.

The COURT.—Whereabouts?

A. It would be here in the courthouse, or the old courthouse, the old one was burnt up, unless they were burned up in the fire—

The COURT.—Did you ever go to the records to see if there was anything recorded?

A. No, sir; I didn't see if there was anything there or not, only the miners told me that these things were here.

Q. (By Mr. HELLENTHAL.) The miners have always told you that those rules were on record here—is that right?

A. Sure, that is the way I have always understood it—filed away in the courthouse.

Q. And the rules—what were the rules that would govern the appropriation of water—the question I want to know is this, whether the rules that governed were the rules that were of record in the Harris Mining District?

(Question not answered because of objection.)

(Testimony of George A. Howe.)

Q. The rules that you referred to, which the miners told you were recorded with the recorder, were the rules that governed the appropriation and acquisition of water rights, of which you have testified?

(Not answered because of objection.)

Q. This is what I want to ask you, Captain—when you were testifying from your recollection of what the written rules were—you testified that your recollection was that you had 30 days in which to record; that is your testimony. Now, in saying that, were you giving your recollection upon what the written rules were upon the subject, or were you intending to testify that the written rules which required 10 days were not the law, but that there was a different rule that was in force upon that subject, and you were only giving your recollection as to what the rules were?

A. Just as I have stated it before, that the written laws were the rules that the miners told me were written, and in the hands of the recorder—that is all I can say.

The WITNESS.—Judge, may I speak a word here about books in regard to laws for miners?

The COURT.—If your counsel asks you.

Q. Was it the written laws that were recorded that were observed and were in force in the district?

(Question not answered because of objection.)

Q. What were the rules that were observed by the miners, as to whether they were the written rules or



(Testimony of George A. Howe.)

other rules—were the written rules observed by the miners?

A. That is the way I have always understood it; of course, we cannot get those books, all of us; there have been times here when I have come to get books in regard to the laws, and I could only find two, one in the land office and one in [915—765] the Governor's office, and I couldn't get either one, and I didn't know what to do; what is a man going to do when they pass laws and only send two books, one to the land office and one to the Governor—what are we to do; we are up against it in a great many ways.

Q. Now, Captain, your testimony as to what the rules were was a mere statement of your recollection of what the written rules contained, is that right?

A. I think I have already answered those questions several times.

Q. That is the way of it?

A. That is the way I understood it, and I don't see how I can say anything different.

Q. In other words, you didn't mean to say that these written rules were not observed in your testimony, as to your recollection—if your recollection differs from the written rules, your recollection is mistaken—is that right? A. Yes.

The COURT.—Captain, how old are you?

A. I am 65 years old.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [916—766]



The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal L. A. MOORE, who being duly sworn to tell the truth, the whole truth, and nothing but the truth, testified in answer to questions as follows:

**Testimony of L. A. Moore, for Plaintiff (In Rebuttal).**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is— A. L. A. Moore.

Q. You live in Juneau? A. Yes, sir.

Q. Do you know where the Harris Mining District is, Mr. Moore? A. I do.

Q. How long have you lived in Juneau?

A. 28 years; I came here on the 7th day of June, 1886.

Q. What has been your business since '86?

A. Mostly prospecting and mining; but of late years I haven't been so much engaged in that, however.

Q. You are getting older, Mr. Moore? A. Yes.

Q. When you came here in 1886 was the Harris Mining District an organized mining district at that time? A. Yes, sir; I believe it was.

Q. At that time were there any rules in this district, rules relating to the appropriation of water and the acquisition of water rights?

A. Yes, I understood so.

Q. Do you know what the rules were then in force by the miners [917—767] of the Harris Mining

(Testimony of L. A. Moore.)

District from the time you came here up to the present time, governing the appropriation of water and the acquisition of water rights?

A. I believe I do, to some extent, anyway.

Q. Those rules, were they published at any time?

A. Yes. sir.

Q. And the publication was in the hands of the miners? A. Yes, sir.

Q. Did you ever have in your possession any publication of that kind?

A. Yes; for a number of years I kept it very handy.

Q. How many years did you have that in your possession? A 15 or 20, I guess.

Q. I call your attention now to a pamphlet marked exhibit No. 33, and ask you to look at it and state how that compares with the publication you referred to as having been in your possession these many years?

A. I would say it is a copy, or exactly the same.

Q. Published by Judge Delaney? A. Yes, sir.

Q. Now, calling your attention, Mr. Moore, to the rules contained in that little pamphlet on the 5th, 6th and 7th pages of that pamphlet,—I do call your attention to the rules that occur on the 5th, 6th and 7th pages of that pamphlet referring to the rule relating to the appropriation of water?

The COURT.—You could not get to the examination of Mr. Moore to-day, and perhaps you had better not begin until Monday morning.

(Whereupon court adjourned until 10 o'clock Monday morning.) [918—768]

(Testimony of L. A. Moore.)

MORNING SESSION,

August 3d, 1914, 10 A. M.

L. A. MOORE, on the witness-stand.

Direct Examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. Directing your attention to those rules on these pages 5, 6 and 7, do you know, Mr. Moore, whether those rules as contained on those three pages to which I have directed your attention, and which are copies of the minutes of the Harris Mining District upon that subject that have been read into the record,—whether those rules were generally observed by the miners during the years that you have lived here, commencing from the time that you first came up to the present time, and if they were looked upon as the laws governing the appropriation of water?

(Objection to question.)

Q. You know in a general way what the miners have done, Mr. Moore?

A. Well, not definitely; I couldn't say positively from actual observation, but my opinion—

Q. The question is this, Mr. Moore, not what you have seen positively from seeing them do, but from what you know and from your intercourse with the miners, your talks with them, your conversations with them, your general meetings with them, from time to time, do you know from such intercourse and such meetings with the miners, as a miner among miners, do you know what the miners did in the way

(Testimony of L. A. Moore.)

of observing those rules?

A. Well, I will say I do not.

Q. Do you understand my question, Mr. Moore—I am not asking you if you know from actual observation or experience, but [919—769] do you know from your intercourse and the talks you have had with miners?

A. I have formed that impression.

Q. The question I am asking you, Mr. Moore, is not what you know from actual knowledge of posting water notices that you have done yourself, or have seen others casually do, but do you know from your conversations which you have had with miners and your talks that you have had with them, and what you know in a general way as a miner among miners in this district—do you know in that way whether the miners observed those rules or not?

A. Yes; I know from the conversations with them that is all.

Judge WINN.—I move to strike out all that part of the answer except where he said yes.

The COURT.—All that part of the answer except the word yes will be stricken.

Q. Now, Mr. Moore, when did you come here first, did you say?     A. 1886.

Q. And you have lived here up to the present time?

A. Yes—well, I have been here every summer ever since.

Q. Did these miners of the Harris Mining District, since the year 1886 to the present time generally ob-

(Testimony of L. A. Moore.)

serve the rules relating to the appropriation of water as the same were read into the record from the records of the Harris Mining District, and as the same are to be found on the three last pages of the little pamphlet marked Plaintiff's Exhibit 33?

A. I think they did.

Mr. HELLENTHAL.—You may cross-examine.  
[920—770]

Cross-examination.

(By Judge WINN.)

Q. Do you remember, Mr. Moore, of having testified upon this subject in the case of the Ebner Gold Mining Company against the Alaska-Juneau Mining Company when that case was on trial before Judge Cushman?

A. Yes, or something—I have forgotten what the case exactly was, but I know I was up here on some case connected with the water.

Q. I will ask you in that case if you did not testify as follows to the questions that were propounded to you by Mr. Hellenthal—Pages 1118 and 1119 of Volume 4 of Cause No. 2155 of the Circuit Court of Appeals—"Q. From what you understand about the customs, how can the right to the use of water in a running stream that has not been previously appropriated by anyone else be acquired? A. He can locate, make location of it, record it and divert it from the regular creek and return it again if he wants to, and state the number of inches you wish to take and where you are to use it and what for—keep a record of it."—Did you testify to that ques-



(Testimony of L. A. Moore.)

tion in that manner?

A. I presume I did; I guess that is pretty near correct, too.

Q. Now, then, you didn't say anything when you were testifying in that case, concerning any time for recording the notice, did you?

A. I don't *remember* that I did; *I know* whether I did or not.

Q. And your idea in testifying upon that case was that after one had appropriated water and put it to some use, he had to return it to the creek again—that was your idea when [921—771] you testified before?

A. Yes, but I suppose that would be optional with him—I don't suppose he would have to.

Q. Did you understand that to be the custom when you testified before?

A. If I testified before I most surely did.

Q. I will ask you if you didn't testify as follows in that case: "Q. Now, where water is running in a running stream but has not been previously appropriated by anybody else, how can anybody acquire the right to the use of the water running in such streams under the custom of the miners? A. No, not definitely—in practice, I don't, because I don't know of any instance where they have taken up water and used it or utilized it. I only know what I have seen and heard and read about it." You testified that way, did you?

A. Yes, I presume so.

Q. Now, you have been studying up that question



(Testimony of L. A. Moore.)

somewhat for this trial, have you not, Mr. Moore?

A. I looked over this little pamphlet.

Q. Who gave you the pamphlet?

A. A man by the name of Jack Barnes, as much as 15 or 20 years ago.

Q. Never did exhibit that pamphlet before, did you? A. Never until I was in court.

Q. Mr. Hellenthal asked you if you had one of those, did he? A. No, sir.

Q. You have read up on that pamphlet, though, since you have been subpoenaed here as a witness, haven't you? A. Oh, yes.

Q. You have talked over this matter with several of the other witnesses who have testified in this case, haven't you? [922—772]

A. No, sir; not about the facts of the case nor about the merits of it.

Q. Didn't you talk over with the other witnesses what you understood and what they understood the miners' rules were?

A. Only mentioned it to Mr. Hellenthal, I guess, in their offices once.

Q. Didn't you talk it over with any of the other witnesses? A. No, sir.

Q. Did you talk it over with any other witness?

A. No; I guess his typewriter was there.

Q. His stenographer was there—do you remember any other parties who were there?

A. He asked me only a very few questions.

Q. How many water locations did you ever take up?

(Testimony of L. A. Moore.)

A. Personally I don't think I have taken up any; I took up one but didn't afterwards file the notice for record; that is down in Snettisham, so I didn't consider that a location.

Q. You posted up a notice?

A. Yes, sir; but didn't carry it out.

Q. Didn't record it?

A. No, because I couldn't comply with what I thought were the requirements for appropriating it, and so forth, and recording it.

Q. Then, it was a fact, Mr. Moore, as you stated in your previous testimony, that you hadn't paid much attention to it, and didn't know definitely what the rules were because you had never taken up any water—that is true, isn't it?

A. Yes; that is true.

Q. Then, you have read this book over somewhat?

A. Yes.

Q. Because you have testified prior to this time about the rules?

A. I talked it over with miners in regard to what was the law, [923—773] of what you have to do and how you can take water and such things as that.

Q. When did you brush up your memory since the trial of Judge Cushman?

A. Since this case I read the book.

Q. You read the book and just concluded that those rules and regulations were the law on the subject, didn't you?

A. I said that was the rule we were all supposed to go by, as the rules made by the miners here in the

(Testimony of L. A. Moore.)

early days, and we didn't know what other rights we had to make locations.

Q. You haven't made any locations since the Snettisham location, of water, and that was in what year?

A. I don't know; there was some more there and I think my name was put in, but I don't know about it; I am not positive about that.

Q. Water locations?

A. The records would show; the party who was interested with me in making any mining claims might have located me in and put my name in; I don't know for sure about it.

Q. If they did you don't know anything about them? A. No; not positive.

The COURT.—When was that?

A. That was in '91, I located claims in Snettisham; and again in '96 I located claims—not myself individually, but myself and partners, four of them.

The COURT.—Did you have anything to do with the making of the notices?

A. I made most of the location notices, although I didn't mention the quartz claims.

Q. How many water locations do you know of your own knowledge have been made in the Harris Mining District, and were, after [924—774] posting recorded within ten days?

A. I couldn't say I know of any.

Q. Can't you say you know of a solitary one?

A. Of water, no.

Q. How many water location notices that you

(Testimony of L. A. Moore.)

know of have been posted, and which were afterwards recorded within 10 days, that the work of excavation was commenced on that water right within 20 days?

A. I cannot say now that I know of any.

Q. Never had any yourself, Mr. Moore?

A. I don't know very much about water locations.

Q. You don't know much about the customs of those people, whether they, in making a water location, followed the miners' rules or not, do you?

A. Only by general reputation and that is that they adhered to the miners' rules.

Q. Then, all you know about it is absolutely from hearsay?

A. Of course, if I would see the notices I would not read them to know definitely if they had commenced work, and so forth, even if I were to see the notices.

Q. Do you know of any contest that has ever come up between two miners claiming a water right, where one was forfeited because he had not followed the rules?

A. No; I don't know any instance of that kind.

Q. You came here in what year?      A. 1886.

Q. Did you ever attend any miners' meetings that were held here after you arrived?

A. Well, there was one in town here in a building some place near where the Wolland Tailor Shop is; I went there and intended to stay, but a party came and informed me that my [925—775] boat was breaking up on the beach so I had to leave again, and

(Testimony of L. A. Moore.)

what was done there I don't know.

Q. Have you been engaged in any active mining enterprise since you have been in Alaska?

A. Yes.

Q. Where.

A. In St. James Bay; I done some work up on the Basin road; I done some work in Snettisham mine; also in Sumdum, also in Glacier Bay, and also in Windham Bay I had claims.

Q. That work was assessment work and prospecting.

A. Yes; assessment work and prospecting.

A. Never did any mining or milling of ores, did you, in Alaska?

A. No; we made a shipment of ore one time below, simply for a test, but it didn't amount to anything, only a few tons.

Q. When did you have your last experience in mining?

A. I have had experience in mining for many years; nearly all my life; New Mexico, Arizona, Nevada and Minnesota.

Q. When did you have this last experience in Alaska of this work that you testified you did on these mining claims?

A. That was all done in the early days, before the old courthouse burned.

Q. That has been how many years ago?

A. Well, 25, I should think, or somewhere along there.

Q. There has been a wonderful development in

(Testimony of L. A. Moore.)

the mining district in that time, in and about Juneau, hasn't there, Mr. Moore?      A. Yes.

Q. It was somewhat in its infancy then, mining was, in Alaska?

A. I guess it was; yes, sir; except the Treadwell property.

Q. What do you remember, in 1886, when you came here, was going on up in Gold Creek Basin and Silver Bow Basin?

A. Individual placer mining in Silver Bow Basin, George Harkrader [926—776] and Archie Gamble, Henry Greer, and I don't know who else.

Q. All placer mining?

A. Yes; placer mining; they all had placer claims up there.

Q. Do you remember any quartz mining that was going on in what you term the Harris Mining District when you came here in 1886, outside of the Treadwell?

A. It seems to me Mr. Harkrader and Mr. Gamble were doing a little work up there on their property, whatever they called it, and one fellow by the name of Bennett.

Q. Did they have a mill?

A. Well, Archie Gamble had one—I don't know what he did at that time, some sort of a grinding mill.

Q. It was not a stamp-mill?

A. No, it wasn't stamps; it was some kind of a reduction—reduction quartz works; then there was another man put in a mill there—I have forgotten



(Testimony of L. A. Moore.)

his name—I think before Archie Gamble put his in, and it was carried away by a snowslide—I have forgotten his name, but it was in the same vicinity, however.

Q. That was about all that was going on in regard to quartz mining and mining at that time in the Harris Mining District, as well as you can recollect, Mr. Moore?

A. I think they were about the only mines there was any attention paid to at that time.

Q. Did you ever see any of the little books—

A. No, sir.

Q. The record books of the Harris Mining District?

A. No, sir; I never had any in my possession, and never looked them over.

Q. Here is one minute-book, Harris Mining District,—August, [927—777] 1881, to February, 1888—do you remember seeing that book at any miners' meeting that you ever attended? A. I didn't.

Q. Don't you know that in 1887 there was a miners' meeting held in Juneau, and that Lewis L. Williams was elected recorder of the miners' organization at that time?

A. I remember he was elected recorder—what date was this?

Q. 1887. A. Probably I wasn't here.

Q. "February 12, 1887, that a meeting was held to elect a district recorder for the Harris Mining District for the ensuing year; D. H. Murphy, Esquire, was chosen chairman, and John G. Heid, sec-

(Testimony of L. A. Moore.)

retary. There being no opposing candidates for said office of district recorder, upon motion of S. Lewis the rules were suspended and Lewis L. Williams, the present incumbent, was chosen the recorder by acclamation. On motion the meeting adjourned sine die"—do you remember of any such meeting having been held at that time, either by reputation or by having been present?

A. I don't know of having been present at that meeting; however, I know of Mr. Williams being the recorder.

Q. Now, I will ask you if at a meeting that was held on the 11th day of February, 1888, which is found at page 92 of this little book of records which I have just called your *attention*—at that time did the following take place: "The regular annual meeting of the miners of the Harris Mining District, Alaska, was held, pursuant to the regular call, at the courthouse, in the town of Juneau, Alaska, on the 11th day of February, 1888. Upon motion, J. G. Heid was chosen chairman, and John Olds, secretary. Upon motion of John Curry, Esquire, the rules were suspended and L. L. [928—778] Williams, the present incumbent of the office of recorder for said Harris Mining District, was elected by acclamation, for the ensuing year, as recorder for said Harris Mining District, Alaska. February 11th, 1888." Do you remember of any such meeting as that?

A. No; I don't remember of having been there; I was probably employed elsewhere then.

Q. Don't you know it was of general repute about

(Testimony of L. A. Moore.)

that time there was no other effort made after this election of Williams in 1888 as recorder—that that was the last act that was ever done looking towards keeping up what was called the miners' organization? A. Well, I don't know that I know that.

Q. You don't know of any other meeting ever having taken place after 1888, do you?

A. No, sir; I don't.

Q. Williams was elected for one year?

A. I suppose so; that was as long as they were elected for.

Q. Did you ever have any knowledge of any other election in 1889 to elect another recorder?

A. No; I don't remember; I wasn't around Juneau in those early days very much.

Q. Do you remember of an occurrence of this kind taking place, Mr. Moore: "That upon the first judge coming to this court and after you had several courts in Alaska, that a decision was rendered by the first judge that came here that the United States laws governed in all respects, and that the miners' rules and regulations had no more force and effect"—do you remember such a decision being rendered here some time after the organization of the court here—shortly afterwards? [929—779]

A. Yes; I remember there was that sentiment.

Q. That was a long time ago—the first court that came here? A. Yes; a good while ago.

Q. Now, don't you know that since that time, Mr. Moore, that no one ever has paid any attention to the miners' rules and regulations in this district?

(Testimony of L. A. Moore.)

A. No; I don't know—I don't know that they have, and I don't know that they have not—I don't know either way.

Q. When was the last time, Mr. Moore, that you had any conversation with any individual, or any aggregation of individuals, on this question of the custom and practice of the taking up and the appropriation of water?

A. Gracious, I don't know; it has been a great many times; I have been talking to people around town about this water business.

Q. I am not talking about that—leaving out the question of talking about this water case—give me a time that you have had any other conversation with any other person, and who the person was?

A. A person has mentioned something, and maybe made some little statement, merely mentioning it casually, but not with the intention of ascertaining any facts or giving any facts.

Q. Not specifically how it was taken up or discussing the rules in detail?      A. No, sir.

Q. None of these rules—the three or four pages—was ever taken up and discussed by you or any other individual in your presence?      A. No, sir.

Q. Just some few remarks were made about the custom of taking up water? [930—780]

A. That is correct.

Q. And that was a long time prior to this case?

A. Oh, different times along; and at the present time it has been mentioned, but I have taken no sides in discussing this matter.

(Testimony of L. A. Moore.)

Q. Prior to this case you didn't have any extended discussion with anyone as to the rules, in detail, did you?

A. No; not any particular discussion—might merely have mentioned it as we passed by and thought no more about it; that is all—I had no interest to talk about it.

Q. You had no interest to talk about it because you didn't have any water rights?

A. I had no water rights, and no interest in the whole business.

Judge WINN.—That's all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Mr. Moore, that decision of the Court at that time only went to the effect that the miners' meetings could no longer decide lawsuits, but that the Court should decide lawsuits—it had no effect upon the rules so far as they did not conflict with the laws of the United States, did it?

(Objection and question reasked.)

Q. That is true, isn't it, Mr. Moore—the decision of the Court only went to the jurisdiction or right of the miners' meetings to conduct hearings, and didn't go to the validity of the rules that were in force, did it?

A. I suppose it was left to arbitration.

Q. At the miners' meetings? A. Yes.

Q. And the decision of the Court was that these miners' meetings in deciding cases was succeeded by the courts themselves? [931—781]



(Testimony of L. A. Moore.)

A. Yes; that is my understanding; I don't know of any case that has been tried by arbitration since I have been here.

Q. That was the decision that you have reference to? A. Yes.

Q. And the decision did not go to the validity or invalidity of the rules, did it?

A. It says what the miners have to refer to if they got into a dispute about the water.

Q. The rules were in force at that time, though?

A. Yes.

Q. Do you remember of a case in which the Court instructed the jury on that point and told them to find a verdict for one side, and the jury found a verdict for the other side, and when the Court made the statement that he would set the verdict aside he was informed, absolutely, by the jury that it would not be healthy for him, and thereupon the Court left the jury alone—do you remember that?

A. I don't remember about that; I don't know whether I was present that time.

Mr. HELLENTHAL.—That's all.

(Questions by the COURT.)

Q. Mr. Moore, when was the last time that you located any mines in the Harris Mining District?

A. I think about 1900, in Glacier Bay—that would not be in the Harris Mining District.

Q. If you were going out to locate a mining claim now, would you locate it according to the rules contained in this pamphlet, Plaintiff's Exhibit No. 33?

A. If I was to locate a quartz claim, I would have



(Testimony of L. A. Moore.)

to comply with the United States mining law. [932—782]

Q. If you were going to locate a placer claim would you locate it according to these rules?

A. No; we have laws which I suppose have been enacted since that which we would have to adhere to—I suppose we cannot go against the United States law.

Q. Do you know whether or not this provision in this pamphlet is observed now: "Placer claims shall be subdivided into three classes, namely, creek or river, gulch or ravine, and hill." Do you know of any such subdivisions as that prevailing now among the miners as to placer claims?

A. I don't know in this district, your Honor, I guess they have such rules.

Q. They have that kind of rules in placer claims?

A. Yes.

Q. Do you know anything about this section—do you consider that this section is in force or that it has ever been in force: "Creek or river claims shall be 200 feet in length and shall extend from rimrock to rimrock in width." Do you understand that you have got to observe in locating claims—that you can only take 200 feet in length and that you must extend from rimrock to rimrock?

A. I would suppose that you could not take more than 200 feet in length unless you take it as the discovery, and then another 200 feet; and as far as being compelled to take from rimrock to rimrock, I don't know about that.

(Testimony of L. A. Moore.)

Q. "Gulch or ravine claims shall be 200 feet in length and 100 feet on each side of the center of the gulch"—is that regulation in force now, or was it in force in 1910—and "Hill claims shall be 200 feet in front, commencing where creek or river claims leave off and running back to the summit, or a distance not exceeding 1,000 feet"—was there [933—783] any such regulation as that in force in 1910?

A. Well, I couldn't say positively—I don't know of any instance, but I would suppose that was the rule; I don't know of any claims being located that way, because I don't know that there has been any hill claims located, excepting those located over placer—the Harkrader and Archie Gamble property was quartz, but how they located them, I don't know.

Q. Couldn't a man, in 1910, go out and locate a placer claim any way he wanted to, just so long as it didn't interfere with someone else's claim?

A. I suppose he could.

Q. Would he have to take 200 feet in length and 100 feet on each side of the center of the gulch if, for instance, it was simply in a gulch—now he goes out here and locates in a gulch would he have to, in 1910, take his claim 200 feet in length and 100 feet on each side of the center of the gulch—do you know of any such regulations as that—any such practice as that?

A. No, I cannot say that I know absolutely a practice of it, because I don't know anybody locating claims like that.

Q. "Section 5, Article 3—Each discoverer of new diggings shall be entitled to 200 feet by discovery

(Testimony of L. A. Moore.)

and 200 feet by pre-emption, in each river, creek, gulch or ravine that he or they may find gold on in paying quantities, providing the number is not to exceed four.” Do you know whether there was any such regulation as that in force and practice among the miners of the Harris Mining District in 1910?

A. Well, I couldn't say of any instance where it has been applied, but I know very little about the Basin and the placer work up there, because I have been in the Basin very little myself. [934—784]

Q. Do you know anything about this rule being in force in 1910 among the miners: “A miner is entitled to hold, if he represents according to the laws of the district, one river or creek claim, one bench or hill claim, and one gulch or ravine claim by pre-emption on each creek or river of the district; a miner can locate ground for not more than two *bona fide* partners and they must be residents of the district at the time of location.” Do you know whether any such custom or requirement was in force among the miners in 1910?

A. I don't know any instance of that kind being done, but I don't know how you would locate the bench claims unless you did it in some such manner as that.

Q. Of course you couldn't locate a bench claim if your bench wasn't away from the river, because if it was along the river it would be called a river claim. “A miner can locate ground for not more than two *bona fide* partners, and they must be residents of the district at the time of location.” Do you know

(Testimony of L. A. Moore.)

whether or not there was any such requirement or ruling or rule or custom or practice observed by the miners in the Harris Mining District in 1910?

A. Speaking of placers, I don't know whether they adhered to that or not; but in locating quartz I know in quartz claims that those were located by associates, and the parties were not present themselves.

Q. I don't mean being present, but it says a miner can locate ground for not more than two parties—was there any such regulation as that—rule, practice or custom?

A. I don't know whether it was or not—not more than two.

Q. “And they must be residents of the district at the time of location.” [935—785]

A. I am not definite on that, I don't know.

Q. Now, “Section 7—All claims shall be distinctly marked by placing stakes at each corner and giving such description by reference to some natural object or permanent monument that the claim can be easily found and its boundary lines readily traced.” Now, do you know of any such requirement—that the claim has got to have each corner marked—I mean by that, was there any such requirement as that in the Harris Mining District in 1910?

A. I think so—on all mining claims, I think, you have to have your four corners marked.

Q. Wasn't it allowed by the miners' customs to mark your two end corner stakes?

A. I never knew of any such practice; I don't

(Testimony of L. A. Moore.)

know that it was a practice in placer claims to mark all four corners, because as I said before, I don't know much about placers, but I supposed the claims are required by the United States laws to have four stakes.

Q. Now, in 1910, in the Harris Mining District, was there any such regulation, custom or practice as this: "The working season shall be from the 1st day of June to the 1st day of October. All placer claims must be represented during this time unless just reasons can be given for laying over claims as provided in these articles." Now, in 1910 was there any rule or custom about laying over claims in the Harris Mining District?

A. I don't know of any; it was a matter of compulsion to lay it over during the winter.

Q. What do you understand by laying over?

A. Deferring work until next season.

Q. If you did one hundred dollar's worth of assessment work [936—786] any time during the year on any kind of a claim wasn't that all that was necessary?

A. They could only work during the wet season—that is the only time they had, and then in the winter and the balance of the year they lay over until next season.

Q. Now, according to the custom of miners in 1910, suppose you didn't have any water on your claim for the whole season, would that exempt you from doing one hundred dollar's worth of assessment work?



(Testimony of L. A. Moore.)

A. If it was any fault of the elements that you couldn't do the assessment work, I suppose you could likely lay it over; I had trouble with the Indians in Arizona, and had to lay over because it was dangerous to try to operate the mine during the Indian outbreak.

Q. Now, was there any such rule or custom or regulation in force in 1910, in the Harris Mining District as this: "All placer claims that have been duly represented during the working season are laid over from the 1st of October until the following June"?

A. Well, I don't know whether it was a rule or practice or not, because I was very little in the Basin.

Q. What I am trying to get at, Mr. Moore, is this—the term laying over claims and representing claims, isn't that a Canadian term, and numbering claims so much above discovery and so much below discovery, and dividing them into creek claims and hill claims, and calling them all those names—isn't that a Canadian practice?

A. I wouldn't hardly think so; I think those were gotten up before there was much work done in the Canadian placers.

Q. Are there any claims out here on Gold Creek called No. 1 below discovery or No. 2 below discovery? [937—787]

A. No, I don't think they are located that way; I don't know if they did it here—I don't know just how they did work it.

Q. Has there ever been any custom here of laying



(Testimony of L. A. Moore.)

claims over and what you call representing claims—isn't it a fact that the only representation that a man has ever had to do in this country and in this district is to do his one hundred dollars' worth of assessment work during the year?

A. The only Government requirements, I think, on quartz claims, but as far as placer is concerned, of course, you had to do the assessment work on those, too; but in those early days I don't know what they did practice.

Q. But in those early days they still had to do one hundred dollars' worth of assessment work, didn't they?

A. Yes; I suppose they did it—I don't know, though.

Q. Well, now, in 1910, if, you wanted to locate a placer claim or any kind of a mining claim in the Harris Mining District, how long would you have to record it in?

A. I would record it within 10 days to be sure I was right.

Q. Record the mining claim within 10 days?

A. Yes; I would try to see that I was right.

Q. It is your understanding that according to the customs and laws of miners in the Harris Mining District in 1910 that a mining claim would have to be recorded within 10 days?

A. I suppose under the Government law it would have to be, but I don't know that that requires you to do that.

Q. But under these rules that you have spoken of,

(Testimony of L. A. Moore.)

did they require mining claims to be recorded within 10 days after they were located?

A. I don't know that they did; the mining claims and water they did, according to what I understand—they required that had [938—788] to be done—that is a local law only.

Q. On water claims?      A. On water claims.

Q. How much time did you have to record mining claims in under the rules and regulations and customs of the miners?

A. A reasonable time, say 20 days; I think the law reads that way; it used to.

Q. Was that in force in 1910?      A. I think so.

Q. That you had to record within 20 days?

A. Yes; it didn't say you had to, it says shall be recorded within a reasonable time, say 20 days—that is the way the Cox mining laws read.

Q. I am talking about the rules and customs of the Harris Mining District in 1910—was there any rule or custom as to when you had to record a mining claim?

A. I always supposed you had to record it within a reasonable time, 20 days, or such a matter; I don't know if you positively had to within that time to be within the local limit.

Q. But suppose you didn't record it within the 20 days?

A. Somebody might jump it and locate and you might get left.

Q. In spite of the laws of the United States?

A. Well, I *don't what* the laws of the United

(Testimony of L. A. Moore.)

States would be, whether it would be in spite of the laws of the United States or not; I suppose the laws of the United States gives the time that you should do it in by saying a reasonable time, or 20 days, or something like that; I suppose that you should record it within that time or forfeit your rights; I don't know about that exactly.

Q. I am not talking about what you know exactly—I want to *know the* custom or practice among miners was in 1910? [939—789]

A. Well, I guess those mostly adhered to that practice.

Q. Now, Mr. Moore, do you know of any custom among the miners in 1910—or any understanding among the miners in 1910 to the effect that the mining rules and regulations in this pamphlet had been superseded by the Federal laws, but that nevertheless the regulations as to water were still in force—do you remember any distinction being drawn between them?

A. No, I don't; I don't know of any instance where that occurred.

Q. Did you ever, since you have been in the Harris Mining District, know or hear of a controversy between miners as to the relating back of their water claims—as to when the rights to the water claims related back?

A. Priority of claims? No, I don't know that I have; no.

Q. Did you ever know in the Harris Mining District of a water location being forfeited for failure

(Testimony of L. A. Moore.)

to record it within 10 days?      A. No, sir.

Q. Did you ever know of any contest before this time in the Harris Mining District between two locators of a water claim?

A. There was some contest in the Basin between—Oh, I don't remember, I think Archie Gamble; I don't know but what Harkrader was interested.

Q. Was that before 1910?

A. I don't remember; it was a long time ago.

Q. Was that before 1900?

A. I don't remember.

Q. Was it before 1888?

A. No, I don't think it was before '88, because I came here in '86, and that would be two years afterward, and I hardly think it was—I think it was after that.

The COURT.—That is all. [940—790]

(Questions by Judge WINN.)

Q. Let me see if I can refresh your memory on a question I asked you a while ago, Mr. Moore—do you remember after you came here of a man by the name of George that undertook to sue Johnny Olds—that is, in the first place he resorted to some miners' rules and regulations to enforce some right that he claimed Olds was violating; there was some disagreement up in the Basin arose between George and Olds over a mining claim, and they undertook to resort to the miners' rules and regulations, and afterwards a suit was brought in the court before Judge Dawson, and in the trial of that case Johnny Heid represented one of the parties and he undertook to introduce the

(Testimony of L. A. Moore.)

miners' rules and regulations for some purpose, and some right under them, and Judge Dawson held that they couldn't enforce the miners' rules and regulations in that case, and that they had no jurisdiction and that the case had to be tried in the courts the same as any other case?

A. I remember something about the case, but I don't believe I was present at the time; I don't remember being at the courthouse or at the trial, anyhow.

Q. That is you heard that some such trial did occur, because of some controversy among the miners because they wanted to enforce the rules and regulations, didn't you?

A. I don't know what the occasion was; I know there was such a case.

Q. You don't know what the Court held, do you?

A. No.

Q. (By Mr. HELLENTHAL.) You say, Mr. Moore, you don't know what the contention between the parties in that case was? A. No, I don't. [941—791]

Q. And you don't know what the Court held?

A. No; I don't know what the Court held, because I wasn't present, and I am satisfied of that, although I have heard of the case and probably read it.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [942—792]

The plaintiff, to further maintain the issues on its part, introduced as a witness in rebuttal WILLIAM HARRIS, who being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of William Harris, for Plaintiff (In Rebuttal)**

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is William Harris? A. Yes, sir.

Q. Did you know Richard Harris in his lifetime?

A. I did.

Q. He was your uncle, was he not, Mr. Harris?

A. Yes, sir.

Q. Do you know where the Harris Mining District is? A. Yes, sir.

Q. When did you come to the Harris Mining District?

A. I came here in February, 1882.

Q. At the time you came here was the Harris Mining District an organized mining district?

A. Yes, sir.

Q. Did you find at that time rules in the Harris Mining District relating to the appropriation of water? A. Yes, sir.

Q. Did you become familiar with the rules that were then in force in the Harris Mining District?

A. I think I did; yes, sir.

Q. Where were those rules kept—a record of them kept—were they in writing?

A. They were in writing; yes, sir.



(Testimony of William Harris.)

Q. Where was the record of them kept? [943—793]

A. I couldn't say who the recorder was at the time I came here.

Q. But were they kept with the recorder—what officer were they kept by?

A. I couldn't say as to that; I don't know where the recorder's office was.

Q. You say you don't know who the recorder was—what I am asking you is this: Who the officer was that they were kept by, whether he was the judge or what office did he hold? A. The recorder.

Q. At that time were those rules published in any way, and were the copies of that publication in circulation?

A. There was a copy—that is, there were copies of the old original locations.

Q. Rules? A. Rules and locations.

Q. Did you have a copy of those original rules—were the copies in circulation at that time?

A. Yes; I used to have a copy.

Q. How long have you lived in the Harris Mining District?

A. I come here in '82, and I stayed here four years and then I went below, and came back to Cook's Inlet in '96; came back to Juneau then in '97, and left Juneau in '97 and went to Dawson; stayed in Dawson three years, went from Dawson to Nome, then went over to Cook's Inlet—stayed in Dawson three years; went from Dawson to Nome and stayed

(Testimony of William Harris.)

there three years, and back here and have been here ever since.

Q. Now, do you know whether those rules that you found as being in force in the Harris Mining District relating to the appropriation of water were observed by the miners during the various periods you have lived here since you first came? [944—794]

A. Well—

Q. You are a miner by occupation, aren't you?

A. I am a placer miner by occupation.

Q. Now, you may answer the question.

A. I think I did observe them, yes.

Q. I will now ask you, Mr. Harris, whether the written rules that you found in force at the time, are they the same rules that were read into the record—did you hear them read into the record here when Mr. Wells was on the stand?

(Not answered because of objection.)

Q. Let me ask you this question—you heard the minutes of the Harris Mining District read while Mr. Wells was on the stand?

A. I think I heard part of it.

Q. Did you hear the rules relating to appropriating of water read into the evidence?

A. I think I did; yes.

Q. Those rules as they were read in evidence the other day in your hearing, how do they compare with the rules that you found in force in 1882 when you came here, and the rules which you say were recorded in the recorder's office—were they the same rules or were they different?

(Testimony of William Harris.)

A. As near as I can recollect they were the same rules.

Q. Now what do you say as to whether or not the miners generally, in the Harris Mining District during the period you *you* have lived here, from the first time you came up to the present time, observed those rules?

A. Well, I cannot say up to the present time because I haven't been in placer work for a few years, but for the four years I lived here and was in active placer mining they were observed up to that time; since then I don't know; I hear [945—795] them discussed *one* in a while, but I don't know.

Q. You have not been actively engaged in mining in the last few years?

A. No; not in the last few years.

Q. And for that reason have no direct knowledge upon the subject?

A. That last placer mining I done was eight or nine years ago, I done for Mr. Kinzie in Silver Bow Basin,—that was the last mining I done.

Q. And what the rules have been since that time you do not know?      A. No.

Q. But up to that time these rules relating to the appropriation of water were in force, were they?

(Question not answered because of objection.)

Q. Now, do you remember of any controversy decided under these rules relating to water appropriations before a miners' meeting in the Harris Mining District in the early days?

A. Yes; I recall one instance.

(Testimony of William Harris.)

Q. Who were the parties?

A. My uncle was one of the parties; my uncle and Joe Juneau—R. D. Harris and Joe Juneau and another party had a dispute over some water in Quartz Gulch, but who the party was I don't know; it was a great many years ago, it was directly after I came here and I don't know who the other parties were—they held a miners' meeting over this water.

Q. Your uncle at that time had taken the water out of the creek that flows down Snow Slide Gulch—that is the same gulch, isn't it?

A. Yes; they were building a dam to throw the water over the snow slide side of the mountain into Quartz Gulch; [946—796] that is right close to where the little Alaska-Juneau small mill now is.

Q. Now, where was the water taken from in Snow Slide Gulch?

A. It was taken from a number of little small streams; we used to call them pup streams.

Q. Did they take in the creek that flows down Snow Slide Gulch?      A. Yes, sir.

Q. And where was the water taken to?

A. It was taken away over the hill to Quartz Gulch.

Q. Taken away from the creek in Snow Slide Gulch?      A. Yes, sir.

Q. And was it returned there?      A. No, sir.

Q. What was the result of that meeting as to who was held to be entitled to the water?

(Question objected to and not answered.)

Q. Do you know whether there was any written record of that decision?

(Testimony of William Harris.)

A. I don't know; I couldn't attend the meeting, and they wouldn't allow me to have a vote in it.

Q. The other party that was claiming the water against your uncle, where was he mining?

A. At the foot of Snow Slide gulch.

Q. He was mining at the bed of the creek that the water was being taken out of? A. Yes, sir.

Q. Now, in whose favor was that case decided?

(Question not answered because of objection.)

Q. What was the point in dispute in that case?

(Not answered because of objection.) [947—797]

Q. Did you have an intimate knowledge of the litigation between the parties?

A. I heard them discuss it.

Q. The parties themselves?

A. The parties themselves.

Q. And the parties that attended the miners' meeting? A. Yes, sir.

Q. And you knew from the people on the ground what the dispute between the parties was about?

A. Yes, sir; I was working on the ditch at the time.

Q. And were right there when the thing was decided—I mean right in the near vicinity?

A. I was working on the ditch; I didn't quit, I kept working just the same.

Q. Did the people generally all know what the case was about? A. Yes, sir; I guess they did.

Q. Was there any dispute as to what the point at issue was? A. What is that?



(Testimony of William Harris.)

Q. The people all agreed as to what the case was about?

(Not answered because of objection.)

Q. Now, do you know what the dispute was between your uncle, Mr. Harris, on the one side, and his partner on the other at that time about the mining claim in Snow Slide Gulch, where each party claimed to have a right to the water?

A. Both parties claimed the water; that was how the dispute came up.

Q. Do you know why each party laid claim to the water—on what grounds, now, did they claim the water?

A. Why, my uncle claimed the water by prior right, that he had worked a little while on the ditch the year before; the other party claimed the water as the water flowed down . [948—798] the hill, and claimed that he had to turn the water back—the other fellow claimed that my uncle should turn the water back into the creek.

Q. He was a creek miner under your uncle's ditch in Snow Slide gulch? A. Yes, sir.

Q. Below the point where your uncle took the water out? A. Yes, sir.

Q. Now, they had a miner's meeting to settle that question? A. Yes, sir.

Q. You were not present at the meeting?

A. No, sir.

Q. After the miners' meeting had decided it, do you know what the decision of the meeting was—not what you heard at the meeting, because you were not



(Testimony of William Harris.)

there, but from what you learned after the meeting was over?

(Question not answered because of objection.)

Q. After the miners' meeting was over, who held the water right? A. My uncle.

Q. And finished his ditch?

A. Finished the ditch and built a dam.

Q. And did he turn it back to the other fellow?

A. No, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Judge WINN.)

Q. When did you say this took place, in what year?

A. That took place in 1883.

Q. When did you first come to Juneau?

A. In 1882. [949—799]

Q. How long did you stay here then?

A. I stayed here four years.

Q. Where did you see any miners' rules and regulations printed at that time?

A. They had a few pamphlets around—little small books, little sized books like I saw exhibited here; I had one of those books.

Q. Where were they printed?

A. I don't know where they were printed; they had them here.

Q. In 1883? A. Yes, sir.

Q. And you left here in what year?

A. I left here in 1886.

Q. In 1886? A. Yes, sir.

Q. Did you locate any water while you were here

(Testimony of William Harris.)

during that first stay?      A. No, sir; I couldn't.

Q. You couldn't?      A. No, sir.

Q. Why?      A. I was too young.

Q. How old were you then?      A. 19 years old.

Q. Did you think that was one of the miners' rules and regulations, prohibiting you from locating water?

A. I didn't know anything about it only what my uncle told me, I was too young.

Q. You supposed that came under the miners' rules and regulations pertaining to water? [950—800]

A. He said it would be contested if I took it up.

Q. How many location notices do you know of having been posted in and about the Harris Mining District locating water while you were here that first stay?

A. Well, I know of several my uncle had on his ditch in Snow Slide gulch, I noticed his claims staked, and noticed Mr. Harkrader's claim and different places, but it is a good while back and I cannot just recollect.

Q. You were too young then, weren't you, to learn anything particularly about the rules and regulations, when you first came here?

A. I don't think I was any too young as far as that is concerned.

Q. What else do you remember about the miners' rules and regulations as they were then understood, such as posting the notices—do you know anything about that?

(Testimony of William Harris.)

A. I don't know as I paid any attention to the rules any more than what I saw carried out.

Q. And what you saw carried out was that you saw some notices posted up there on your uncle's ditch, and then you were working up there for him?

A. Yes, sir.

Q. That was about all that you ascertained pertaining to mining or any mining rules or water location notices at that time? A. Well, yes.

Q. You didn't work for anyone else at that time here, did you,—any mine?

A. No, not for miners—well, I did work some up here for Charley Wells; that is hydraulic mining.

Q. During the first stay? [951—801]

Q. You didn't record any water location notices for water yourself, did you?

A. No, sir; never a location of water in the Harris Mining District.

Q. Never did have one yourself? A. No, sir.

Q. Never did record one? A. No, sir.

Q. You don't know what these parties that have been locating water, taking up water have done—you haven't kept any track of how they were doing it or for what purpose? A. Not since that time.

Q. Not having located any water yourself since that time or at that time, you have never given these rules any particular notice until they came up in court in the trial of this case, have you?

A. Yes; I think I have, because it has been my business, following placer mining up until I came back from Nome, and the water rights and things like

(Testimony of William Harris.)

that go with placer mining, and naturally if I was going to make a location anywhere in the country I would have to be posted on the ways to make it; in Nome, of course, the laws are probably a little different from what they are here in Juneau, and in Dawson they are a little different.

Q. You left here in 1887, where did you go?

A. Sir?

Q. Where did you go when you left here in '87?

A. 1886, you mean?

Q. 1886, yes. A. Colorado.

Q. Did you follow mining back there? [952—  
802] A. Yes; I did.

Q. Placer mining?

A. I was in Leadville for a while.

Q. How long was it before you came back to Alaska?

A. I left here in 1886 and came back in town in 1897; I had been up to Cooks Inlet prior to that, but came back to Juneau in '97.

Q. How long did you stay here after 1897?

A. I came here along about the first of the year in '97, and stayed here until August, 1897.

Q. You didn't locate any water or do any placer mining in Juneau during that stay, did you?

A. No, sir.

Q. And you had no occasion to look into any rules or regulations about water or locating mining claims while you were here that time, did you?

A. No, sir.

Q. Then you went to the Yukon, did you?

(Testimony of William Harris.)

A. Yes, sir.

Q. You did some placer mining in there?

A. Yes, sir.

Q. They have certain rules and regulations that you follow in there, haven't they? A. Yes, sir.

Q. From the Yukon where did you go?

A. From Yukon I went to Nome.

Q. Nome, Alaska? A. Yes, sir.

Q. Did you do some placer mining there?

A. I did.

Q. How long did you stay there? [953—803]

A. Three years.

Q. Then where did you go?

A. I came back to Juneau.

Q. What year? A. I think that was in 1894.

Q. 1894? A. I think it was that.

Q. Have you done any placer mining around Juneau since 1894?

A. Yes; since I came back I done work for Mr. Kinzie, doing some placer work up at Silver Bow Basin.

Q. Mr. who? A. Mr. Kinzie.

Q. What year was that?

A. I believe that Mr. McDonald, if I am not mistaken, was the superintendent at that time.

Q. You didn't make any location of placer claims or water rights yourself? A. No, sir.

Q. And you had no occasion to look up the miners' rules and regulations, or make any inquiry about them at that time, did you?

A. No; I thought I was pretty well posted on the

(Testimony of William Harris.)

laws in this part of the country, and I didn't pay any attention to it; I haven't done anything since.

Q. You haven't paid any attention to any rule, custom or regulation of the miners' at all pertaining to the acquisition of water or placer mines?

A. No, sir.

Q. You say that you saw some rules and regulations that were printed when you came here in 1882 or '83? [954—804]

A. Yes, sir.

Q. Do you remember of having read them over?

A. Yes; I read them over.

Q. When do you remember seeing that copy that you had at that time last?

A. The last time that I saw the copy, I had it among my effects on a little creek up close to Nome; I had my whole outfit burned and I lost it then, and I haven't had one since.

Q. You followed those rules and regulations while you were in Nome, did you?

A. I took them along; I thought they would be pretty handy.

Q. Did you have them when you were mining in the Yukon?

A. Yes, sir; I took them along with me.

Q. You thought they might be of some assistance to you while you were in the Yukon and some assistance to you while you were in Nome?

A. Yes, sir.

Q. Pertaining to water and placer mining?

A. Yes, sir.

Q. And the use of water in placer mines?

A. Yes, and quartz and everything.



(Testimony of William Harris.)

Q. Now, what do you say this dispute between your uncle and someone else was about?

A. It was over the rights of the water.

Q. Over the water rights? A. Yes, sir.

Q. On Gold Creek?

A. Yes, sir; and its tributaries.

Q. You were working up there at that time for your uncle? A. Yes, sir.

Q. And that was in 1883? [955—805]

A. Yes.

Q. Where were you mining, in Gold Creek?

A. No, sir; we were mining in Quartz Gulch.

Q. Quartz Gulch? A. Yes, sir.

Q. You were using the water of Gold Creek, then, in mining? A. Gold Creek?

Q. Yes.

A. No; we were not using the water of Gold Creek.

Q. What water were you using in mining?

A. We were taking water up over this side of the mountain from Snow Slide Gulch.

Q. From what streams?

A. A lot of little streams.

Q. And this other fellow that was opposing him had a mining claim down in Gold Creek?

A. In Gold Creek.

Q. And he didn't want your uncle to use that water that came down the hillside for working his claims? A. Yes, sir.

Q. And your uncle claimed that he took it up first and he used it first? A. Prior right, I said.

Q. He had a prior right under the miners' rules?

(Testimony of William Harris.)

A. Yes, sir.

Q. You were not at the hearing that took place before the miners' meeting, were you?

A. No, sir; I was working on the ditch.

Q. Did you ever attend any one of those meetings while you were here? A. I did not. [956—806]

Q. Do you know where they held the meeting while you were here on that first trip before you went away in 1886? A. I do not.

Q. You do not remember who was recorder?

A. No; I do not.

Q. In fact, not being at the meeting, you don't know whether they had any books of record or not, do you? A. No.

Q. You never saw any?

A. I heard the miners discussing it, talking about the records and the law, and they had these little pamphlets, and that is all I know about it.

Q. Now, when you came back here—when was that, 1897—did you say you came back to Juneau next?

A. I went in to Dawson in 1897—about 1904, somewhere along there.

Q. You never heard of any miners' meetings and miners' organization since that time, have you?

A. No. .

Q. And you had no occasion to take up any water or water rights in and about Juneau, and you never discussed the matter to any extent, did you?

A. No, sir.

(Testimony of William Harris.)

Judge WINN.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. The man with whom your uncle had the dispute Judge Winn asked you, I think, whether or not he owned a claim in Gold Creek—his claim was situated in Snow Slide gulch, was it not, above Gold Creek? A. Yes; in Snow Slide gulch.

Q. That is in the bed of one of the streams from which your [957—807] uncle took the water?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Questions by the COURT.)

Q. Mr. Harris, when was the last time that you saw a water location notice?

A. Well, in this district?

Q. Yes.

A. I haven't saw one that I could be positive of since 1886—that I would be positive about.

Q. Not within the last eight years?

A. Not since 1886.

Q. Whose location notice was that—what water location notice?

A. The location of my uncle and Mr. Harkrader and a few of the men that were working up in the basin at that time.

Q. Were they recorded?

A. I could not swear to that.

The COURT.—That is all.

(WITNESS EXCUSED.)

Mr. HELLENTHAL.—Our other witnesses in rebuttal are not present, your Honor.

(Testimony of F. J. Wettrick.)

Judge WINN.—Then we will go on with our case in chief after lunch.

(Whereupon Court adjourned until 2 P. M.)  
[958—808]

## AFTERNOON SESSION.

August 1, 1914, 2 P. M.

The defendant, to further maintain the issues on its part, recalled as a witness F. J. WETTRICK, who, having been previously sworn, testified on oath as follows:

### **Testimony of F. J. Wettrick, for Defendant (Recalled).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Wettrick, there are a couple of questions that I would like to ask you on direct examination. When you were on the witness-stand before, Mr. Hellenthal was questioning you considerably about this brushed-out trail or lower side line of the Lotta claim as it was in 1908 and 1910, and some questions were asked you as to whether or not it could be found or distinguished from the other surrounding ground by anyone walking over the property—I wish you would explain to the Court, in 1910, and prior to August 1st, as to whether or not anyone walking over that portion of the ground covered by the clearing out could distinguish it from the surrounding ground?

A. One could very easily find the lower side line of the Lotta as brushed out, because of the large amount

(Testimony of F. J. Wettrick.)

of alder that had been cut off the line and thrown to one side, and that alder, of course, was in the process of decay; there was a small growth and little sprouts from the stumps over the alders that had begun to grow, but they were very short, and, in my opinion, one would have no difficulty in finding it.

The COURT.—What time are you referring to, Judge Winn?

Q. This is in 1910, and prior to August 1st, and prior to the time that you did the brushing out on the line in 1910 that I am speaking about?

A. Yes, sir. [959—809]

Q. Now, I will ask you if you have been down in the creek where the Alaska-Juneau Company has its present dam? A. I have.

Q. I wish you would explain the location of that dam with relation to the surrounding banks—are they precipitous, or is there quite a bed in the creek there,—give the Court some idea of how it is.

A. The creek at that place runs through a comparatively steep canyon; the walls of the canyon are quite steep and precipitous, in fact so steep that it is not possible to climb up along the side with comparative ease; one has to—one climbs up from the creek bottom to the top of the bank there with some difficulty; a portion of the bank where the side line of the Lotta crosses the creek is free from alder.

Q. Now, I will ask you how it would be if anyone was standing down where the dam is constructed, as to whether or not they could see along from that point this brushed-out trail or the lower side line, as

(Testimony of F. J. Wettrick.)

they have referred to it, of the Lotta claim?

A. From the creek bottom one can see the commencement of that line, but you cannot follow the line its entire length; you are down considerably lower when you are in the creek bottom than the slope of the surface ground there, and you cannot see for a great distance, but you can see the commencement of the brushed-out line.

Q. Now, I will ask you if these various locations that you have spoken of, and the position the dam has been in, first as it was prior to the trial when Judge Cushman decided the Basin case, and, secondly, as it is now, as to whether or not you made those locations by actual survey or by just going down and looking over it with your eyes? [960—810]

A. I did that by actual survey—careful survey and measurements.

Q. I will ask you in your opinion as to whether or not that dam could be located with any degree of certainty by simply going down and looking up over with your eyes and ascertaining whether or not it was above or below the lower side line of the Lotta claim?

(Not answered because of objection.)

Q. Mr. Wettrick, are you a Deputy United States Mineral Surveyor?

The COURT.—Judge Winn, the objection was not sustained on the ground that he is not qualified.

Q. I will ask you as a surveyor, and also from knowing where this brushed-out line along the lower



(Testimony of F. J. Wettrick.)

side line of the Lotta claim is, as to whether or not you or anyone else, as a surveyor, could with that data alone as to the brushing out as you knew it was there along the lower side line of the Lotta, could correctly locate the Alaska-Juneau dam by a simple inspection, without making a survey?

A. Yes, sir; it would be absolutely impossible to locate the position of the dam there with reference to the side line of the Lotta with any degree of care by mere inspection of the surrounding country there and the premises, for the reason that the creek runs through a comparatively narrow channel there, and the line crosses the creek at an angle, and to look or sight from the commencement of the line on the right-hand side and trying to run it up with the one on the left-hand side, it is not possible of any accuracy, because you might be off ten or fifteen feet unless you went up on top and then sighted across, in which case you can get it more accurate.

Q. I will ask you, Mr. Wettrick, if you know approximately, the ground that is claimed to be covered by the Oregon Lode Claim, as it was located in the year 1910? [961—811] A. I do.

Q. I will ask you to look at this map which I will have marked for identification Defendant's Exhibit "C-1," and ask you if you know what that map is a map of, and who made the original of it—this is a photographic copy of some sort of a map that they copied into the record in that case, No. 2155 of the Circuit Court of Appeals?

A. The original of that map was prepared by me

(Testimony of F. J. Wettrick.)

and under my direction.

Judge WINN.—I offer that map in evidence, if your Honor please.

(Whereupon said map was received in evidence and marked Defendant's Exhibit "C-1.")

Q. I will ask you if you have located upon this exhibit that you have just had the location of what the plaintiff company claims to be their Oregon location, as it was made in the year of 1910? A. I have.

Q. I wish you would tell to the Court there what the tracings are that indicate that, and what letters there are on it indicating it?

A. The claim is marked "Oregon Lode," and its boundary lines are indicated by broken lines, the end line of the Oregon lode being identical with the side line of the Colorado lode—the Colorado lode being shown here.

Q. I will ask you approximately, Mr. Wettrick, how much of the Oregon location as you have just indicated overlaps onto the Lotta patented claim?

A. It overlaps almost the entire width of the Lotta.

Q. And then the portion below that extended over onto what is known as the Parish No. 2 Lode Claim?

A. Yes, sir. [962—812]

Q. Now, you know where, with respect to the Lotta and the Parish No. 2 lode claims, the Canyon claim of the plaintiff company, as it was located, I think, in September, 1910, was?

A. I know the position that the Canyon lode claim occupied.

(Testimony of F. J. Wettrick.)

Q. Did the Canyon location as claimed by the plaintiff company overlap onto the Lotta patented claim?

(Admitted upon promise to be connected.)

A. The Canyon claim overlapped the Lotta claim almost entirely—that is, to almost the entire extent of the Lotta.

Q. Now, Mr. Wettrick, when you left the witness-stand the other day we had offered in several exhibits here showing some of the corner posts and end stakes as were found on the Lotta claim, I think, both in 1908 and in 1910—I wish you would, for the sake of singling out the corner stakes you found on the Lotta claim in the year of 1908, and those that you found in 1910, that you would make them on our exhibit “S” with red ink or red pencil?

A. Yes, I will place a circle in red around those corner posts. Do you want any more than those found on the Lotta side line?

Q. I want the one you said belonged to some other claim and was on the side line of the Lotta claim—have you put that on?      A. I have.

Q. Now, I will hand you Defendant’s Exhibit “V,” which is a photograph, and to which your attention was called before, and I will ask you if the legend as shown on that corner post was there in 1910?      A. It was.

Q. Is it plainly to be read there?

A. Very plain.

Q. What legend did you find on that corner post in the year of 1910? [963—813]

(Testimony of F. J. Wettrick.)

A. Found "6-S-87."

The COURT.—The year 1910—that would convey nothing to me about this case unless you confine it to the 1st of August.

Q. Did you see that stake there in the year of 1908? A. I don't remember that I did.

Q. When did you see it there in 1910?

A. Sometime during the latter part of September or October.

Q. Do you know when that stake was put in there, and who put it in?

A. I don't know of my own knowledge, no.

Q. You don't remember whether it was put there in 1910 or not, before August,

A. I don't know as to that, no; all I know is that I saw it there in place when I went up there during the fall of 1910 to tie it in with some other corner post to see how it lined up and tied in.

Q. You don't remember whether it was there in 1908, or not? A. No, I don't now.

Q. What corner is that, Mr. Wettrick, that has that legend on it, with reference to the Lotta claim?

A. This is corner No. 6 of the Lotta claim, marked 6 on the Defendant's Exhibit "S," being found above the Basin road leading to Perseverance and also above the flume line.

Q. And above the other stakes you have testified to being on the side line of the Lotta?

A. Yes, sir.

Q. I will hand you Defendant's Exhibit "X" in this case, and ask you whether or not the corner

(Testimony of F. J. Wettrick.)

stake or post—the end stake—the condition in which it is shown in this picture, if you know what legend was on this when you saw it in 1910?

A. Yes, sir; I do.

Q. Did you see that post in the year 1908? [964—814] A. I did.

Q. Which one of those stakes on the Lotta is it?

A. This is corner No. 5 of the Lotta, found near the cabin which has been referred to, and which is shown upon this picture as well as some others that have been introduced.

Q. Was there anything written or carved on that post in 1908? A. Yes, sir.

Q. Was it there in 1910? A. It was.

Q. How was the post with reference to its position both years you saw it?

A. In the same place exactly.

Q. And what did it have written on it?

A. It had "S-U. S. S. No. 87."

Q. What is survey No. 87?

A. That is the official survey of the Lotta.

Q. I will hand you Defendant's Exhibit "W" and ask you if you remember that corner stake or end post, or whatever it is?

A. Yes, I do; that is the same one we have just been referring to, corner No. 5 of the Lotta, being found near that cabin.

Q. Does this picture show the cabin?

A. This picture shows the door leading into the cabin, yes.



(Testimony of F. J. Wettrick.)

Q. You have already given the legend that was on it? A. Yes.

Q. Here is another one, Mr. Wettrick—Defendant's Exhibit "Y"—do you identify that as one of the corner posts or end lines of the Lotta claim?

A. Yes, sir.

Q. What one is that?

A. This is also corner number 5, showing a little more plainly the cabin near the corner.

The COURT.—Existing when? [965—815]

A. Existing in 1908—'10, and '13 and '14.

The COURT.—What part of 1910?

A. During the months of October and November, as I remember it, recall it now; that is the first time I had occasion to resurvey that line of the Lotta; I was there in the summer of 1908, and I saw it again in the latter part of the summer of 1910, somewhere around October or November.

Q. Where was it located with reference to the cabin, or when you found it in 1910, where was it with respect to where it was located in 1908?

A. Same place exactly.

Q. The cabin is still there, isn't it?

A. Yes, sir.

Q. Now, are there any other stakes on the end line or corner line that we haven't mentioned that you found on this claim in 1908 or 1910—on these photographs? A. Yes, sir.

Q. What are they?

A. Post No. 4, on the Lotta was in place, that being the southerly center end stake, and corner No.



(Testimony of F. J. Wettrick.)

3 of the same claim was in place also.

Q. Both in 1908 and 1910?

A. Yes, sir; as well as the witness corner and the corner No. 6 of the Lotta.

Q. What, if any, legend was written or carved on any of those stakes just mentioned?

A. They all had the survey number of the Lotta claim on—S-87.

Q. Both in the year of 1908 and 1910?

A. Yes, sir.

Q. How was the position in 1910 with relation to the position they were in 1908? [966—816]

A. They were in the same place.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wettrick, the line was brushed out by you in 1910, about September, wasn't it, that Lotta line?

A. I believe so—September or October, thereabout.

Q. All the lines of the Lotta were brushed out at that time, were they not?

A. No—at that time I brushed them all out, you mean?

Q. At that time all of the lines of the Lotta had been brushed out, or was the brushing out confined to just that one line?

A. No, in 1910 the brushing out consisted of the moving of the small brush on the end line of the Lotta between stakes 3 and 4, the southeasterly end line.

(Testimony of F. J. Wettrick.)

Q. Three and five?

A. Yes, 3, 4 and 5, and the southwesterly side line of the Lotta up to No. 6, and through 6 to 1 and 2.

Q. Those three lines were well brushed, you think, in 1910?     A. By me or under my direction.

Q. Under your direction?     A. Yes.

Q. And they were well brushed?

A. Fairly well, yes.

Q. When were you up there last, Mr. Wettrick?

A. Last Sunday.

Q. Those lines still show up there, do they?

A. Oh, yes.

Q. Show plainly?

A. Yes, very plainly. [967—817]

Q. The corner stakes that you have testified to have since been replaced by you, have they not?

A. No, the same corner posts were merely surrounded by concrete bases.

Q. You have done that with all the posts of the Lotta?

A. No, sir; not with all of them.

Q. Which post didn't you put in that way, Mr. Wettrick?

A. I didn't put No. 4 in that way nor No. 2.

Q. Those are not corners?

A. No. 2 is a corner, the one near Gold Creek right at the bank of Gold Creek.

Q. Nos. 1, 3, 5 and 6 you put in that way?

A. Not No. 1, that is a center end stake, and we didn't put that in that way.

(Testimony of F. J. Wettrick.)

Q. Which one, now, did you put in with a cement base?

A. No. 6, No. 5, and No. 3, I believe.

Q. Now, all those concrete piers were put right around the stakes, is that right?

A. The stakes were surrounded by a concrete base.

Q. That is the way they are now, is it?

A. That is the way No. 6 and No. 5 are, yes.

Q. How about No. 3?

A. No. 3 had fallen over, or wasn't standing up, so we had to reset that; I, myself, didn't go up to do this, but I had the concrete corner post surrounded by concrete; I gave the line with the transit, and set my corner No. 5, and my assistants put the concrete around the base.

Q. It was done under your direction?

A. Yes, sir.

Q. You saw it was done right?

A. I didn't go up to it—I assumed that my directions would be carried out correctly. [968—818]

Q. You don't know that that stake No. 3 is standing in the ground as it has always stood, and that the concrete stake is up on the hill further?

A. No, I don't know that.

Q. No. 3, I am talking about.

A. No. 3, that is the one over the hill.

Q. Right up on the hill, on the end line—you wouldn't swear No. 3 is right on the end line that was brushed out?

A. Certainly the end line that was brushed out several times.

(Testimony of F. J. Wettrick.)

Q. And yet, being over there at several different times, you and your men under your direction brought your post 15 feet from where the old post was?

A. Now, let me tell you what the situation is; the corner post No. 3 was put in there according to the patent notes, which calls for 300 feet from corner No. 5.

Q. You didn't follow the stakes on the ground when you put your No. 3 stake in there then?

A. I didn't go up to it; I didn't see it; I gave the directions to put in corner No. 3 of the Lotta.

Q. When you determined the line of the Lotta, you paid no attention to the stakes on the ground but disregarded them, and put your concrete piers 15 feet away from where the stakes on the ground are, isn't that right?

A. No,—when are you talking about?

Q. When you put your concrete piers in.

A. No, you haven't got the right idea about it at all.

Q. You said—how is it you got your concrete piers 15 feet away from where the post on the ground was?

A. The way corner No. 3 would set, the patent notes were run out and the directions were given to put it in according to the notes.

Q. You didn't do that when you set corner No. 5, did you? [969—819]

A. Corner No. 5 was right there—surrounded it.

Q. Corner No. 3 was right there, too, wasn't it?

A. I didn't see it, I didn't go up to it.

Q. Why didn't you go up to corner No. 3?

(Testimony of F. J. Wettrick.)

A. Because I didn't particularly care about walking up there at the time.

Q. Did you care about walking to corner No. 5?

A. I don't know whether I cared or not; that has nothing to do with it anyway.

Q. The distance between No. 5 and 6 isn't the same as the distance given in the patent, is it?

A. No, those were surrounded by concrete where they were.

Q. What is the difference between those—how many feet longer is that claim on the ground than as called for by the patent?

A. I think something like 26 feet.

Q. You didn't follow the patent when you put those stakes in, but put the stakes in according to the stakes in the ground, making the claim 26 feet longer than the claim as shown in the patent, is that right?

A. I just told that I surrounded those stakes with concrete.

Q. Why didn't you surround No. 3 with concrete?

A. I wasn't up there when that was done.

Q. Did you tell your men to put the concrete right at the stake?

A. I told them to surround the corner posts with concrete.

Q. You didn't tell them to go 300 feet up the hill and then put in a concrete post?

A. I don't remember that I did.

Q. What did you mean, Mr. Wettrick, when you said a moment ago that there was a difference be-

(Testimony of F. J. Wettrick.)

cause you followed the patent notes to set corner No. 3?

A. I mean that when they went up there to put up No. 3 they were to set it according to the notes. [970—820]

Q. You know that the line was about 15 feet short in 1910, don't you? A. I do.

Q. And you know the stake was in the ground?

A. I do, most assuredly.

Q. You know that line was just a little over 285 feet?

A. Yes, that is taking those corner posts as they were on the ground; that corner post No. 3 was an old post, leaning somewhat, and rotted off; my assistants, I suppose, because it had fallen over, did not take that as being the corner and they relocated that corner from the patent notes.

Q. Now, what reason was there to assume that corner No. 5 was one of the right posts and corner No. 3 wasn't?

A. No assumption about it; I said I surrounded them with concrete; I would have a pretty good right to assume this according to the decision of Judge Cushman.

Q. You assumed, however, that that wasn't the right stake for corner No. 3 and moved the concrete stake further up?

A. No; I didn't; you are trying to get me to say something that is not true.

Q. You mean to state, Mr. Wettrick, that it isn't true that the concrete pier put in the ground at



(Testimony of F. J. Wettrick.)

corner No. 3 is approximately 15 feet above the stake, corner No. 3, as it set in 1910—do you mean to say that is not true?

A. I didn't say anything about it; it may be 15 feet or it may be a little less.

Q. Why did you not put that concrete on the stake as it stood on the ground, as you did in the other cases? A. I told you that I wasn't there.

Q. Then you don't know anything about it?

A. I know that I gave certain directions and I assumed that the [971—821] directions were carried out to the best of their ability. I know, however, that the concrete surrounds corner No. 5 and No. 6, being the side line of the Lotta claim, in identically the same position as it was in 1908 and 1910.

Q. Now, what were the directions that you gave your assistants about corner No. 3?

A. The exact directions I couldn't say exactly, except to surround the post No. 3 as they had done the others.

Q. You didn't tell them to go 300 feet up the line as called for in the patent, and there set the corner post? A. No, I don't think I did.

Q. What did you mean then when you said in response to my question a little while ago that that line was 15 feet short as the corner post is marked upon the ground, and that you had made that 300 feet as the patent calls for?

A. I mean that my assistants in carrying out the idea of concreting the corner posts probably in look-

(Testimony of F. J. Wettrick.)

ing over the ground or in finding that corner post, sought to relocate it from the patent notes.

Q. But your assistants relocated that corner from the patent notes?     A. Yes.

Q. That was your testimony?     A. Yes.

Q. It wasn't by your explicit directions that it was done?     A. No.

Q. It was easy for your assistants to make such a mistake, was it?

A. It may be, I don't know about that; I wasn't there.

Q. Who were your assistants, Mr. Wettrick?

A. I think Mr. Wilhelm and one other person; I don't remember who carried the concrete; I don't remember.

Q. Mr. Wilhelm is also a surveyor, is he not?

A. Yes, sir. [972—822]

Q. He is associated with you, is he not?

A. Yes, sir.

Q. He was one of your assistants?     A. Yes.

Q. Just a question—that corner at corner No. 6 is the Forrest corner, is it not?

A. Yes, and the Lotta also.

Q. It is marked for the Forrest, isn't it?

A. No; it is marked for the Etta.

Q. It isn't marked for the Lotta, is it?

A. It is marked for the Lotta, S-37.

Q. The witness corner, is that marked for the Lotta, too?

A. The witness corner—that is the one down at the road, you mean?

(Testimony of F. J. Wettrick.)

Q. That is a Forrest corner, isn't it?

A. That is on the end line of the Forrest also, as well as the side line of the Lotta.

Q. How was that marked?

A. That, if I remember, had the survey number of the Lotta on it and also the Forrest.

Q. Had the survey of the Lotta on it in 1910?

A. In addition to the Forrest number; I am reasonably sure of that; I didn't look that up in my notes, because it is a witness corner.

Q. You know how that corner No. 3 looked on the ground?

A. I know how it looked in 1910.

Q. I am handing you a photograph marked for identification Plaintiff's Exhibit No. 35, and ask you if that is the corner that you saw in the ground?

A. That is pretty hard to tell.

Q. Does it look like it?

A. No, not exactly. [973—823]

Q. Now, the question, Mr. Wettrick, I am asking you—is that a good, correct picture of corner No. 3 on the ground?

A. Oh, I don't know; it may be; I never looked at it from that angle, maybe, but I wouldn't say because I wasn't up there when the picture was taken.

Q. You are not able to tell anything about a photograph unless you see it taken?

A. I can recognize a great many photographs.

Q. I now hand you photograph, Plaintiff's Exhibit No. 36, for identification, of corner No. 3 as established in concrete on the ground.

(Testimony of F. J. Wettrick.)

A. It isn't an excellent picture—not a very good one; it shows that corner all right.

Q. That is corner No. 3 as it is on the ground, isn't it?

A. I don't know whether that is corner No. 3 or not; I don't see any marks on it; it has a concrete base all right.

Q. It has the appearance of corner No. 3, hasn't it?

A. Yes, it looks like it; it has one of those square timbers used for corner posts.

Q. You would take that for corner No. 3 if you were to see it in the dark, wouldn't you, Mr. Wettrick?

A. I don't know whether I would or not; I would satisfy myself that it was corner No. 3; I am sure I wouldn't walk away from it and say I couldn't find it, or anything of that kind.

A. All right, now, I hand you another photograph for identification, Plaintiff's Exhibit No. 37, and ask you if that doesn't show corner No. 3 as set in concrete, and also corner No. 3 as set in the ground 15 feet away from that?

A. I don't know; I haven't been up there recently.

Q. You don't know?      A. No.

Q. Now 5 was a painted post, wasn't it? [974—  
824]      A. No. 5?

Q. Yes, in 1910.

A. Oh, it had a little white paint on it, I think.

Q. And the legend on it was painted in black, was it not?

(Testimony of F. J. Wettrick.)

A. The legend was in black, whatever legend there was.

Q. And No. 6 was a different kind of a post, and was scribed, was it not?

A. No. 6 was exactly the same kind of a post.

Q. Wasn't it older?

A. The same timbers exactly.

Q. As to age? A. Same thing exactly.

Q. It was scribed, was it not?

A. It was scribed; and the same kind of a post, but what appeared to be, and was taken, as the patent stake was alongside of this patent stake that you find at corner No. 6, a five by five.

Q. Was that scribed?

A. The stake alongside, that looked to be the patent stake, had on it S. No. 85.

Q. Now, there was no old stake at corner No. 6, was there?

A. There was no old stake at corner No. 6.

Q. The stakes then were different—that is to say, there was a new stake there at corner No. 5?

A. Yes.

Q. And a new stake at corner No. 6? A. Yes.

Q. They were both scribed?

A. No. 6 was scribed.

Q. And not painted?

A. Yes, it may have been painted white.

Q. The legend wasn't painted? [975—825]

A. No, the legend wasn't painted.

Q. And the new stake at corner No. 5 and the old

(Testimony of F. J. Wettrick.)

stake at corner No. 5 were different kinds of stakes, weren't they?     A. Yes, they were.

Q. The one at corner No. 5 is a new stake tied to the old stake?

A. The old stake was attached on to the five by five to preserve the legend and keep it; the old stake having rotted away a little.

Mr. HELLENTHAL.—That is all.

Judge WINN.—That is all.

The COURT.—I didn't quite understand your exhibit—now, you have delineated on there the Lotta lode claim; is that the Lotta lode according to the stakes on the ground or according to the patent?

A. That is the Lotta lode according to the stakes on the ground.

The COURT.—When did you make that plat?

A. I made that plat about two weeks ago from notes and surveys which I made in 1908 and 1910, together with some—

The COURT.—You know that Judge Cushman in the decree of this court has said just what the Lotta lode claim is, in that old suit of the Ebner Gold Mining Company against the Alaska-Juneau Gold Mining Company?

A. Just what the Lotta is? I don't know that he said distinctly—I read his decision at the time, but the position of the lower side line of the Lotta, was, in my opinion, at that time defined as being where the stakes were upon the ground and are now.

The COURT.—Let's see if I can refresh your



(Testimony of F. J. Wettrick.)

memory—Judge Cushman held that “It is ordered, adjudged, considered and decreed that the plaintiff have and recover of and from the defendant the possession of that certain lode mining claim known as the Lotta Mining Claim, United States Survey No. 87, and that the [976—826] defendant be ejected from the possession of said mining claim, or so much of the same as it is in possession of, which said lode mining claim is particularly described as staked upon the ground and more particularly as follows, to wit:” Then it goes along and gives the courses and distances; he has decided in there that the Ebner Gold Mining Company owned that property, and that that is the Lotta Lode Claim; now, have you ever surveyed that according to Judge Cushman’s decision?

A. I don’t know just now, from the courses and distances he gave.

Q. Can you tell me whether or not that plat which has been introduced, called the Lotta Lode Claim, is the Lotta Lode Claim as Judge Cushman has set it forth in this decision?

A. It is if he follows the courses and distances—

The COURT.—There are the field-notes; tell me whether that is the Lotta claim as Judge Cushman has decided it. What I would like for you to do for the information of the Court is to take the field-notes—the courses and distances as given by Judge Cushman, and tell me how it compares with the plat that has been introduced in evidence, Defendant’s Exhibit “S.”

(Testimony of F. J. Wettrick.)

A. For that purpose I will have to read over the description and compare it.

The COURT.—What I would like for you to do, Mr. Wettrick; if the field-notes as set forth by Judge Cushman do not plat out the same as the Lotta lode plats out on exhibit “S,” I wish you would fix it so I can superimpose the plat made according to Judge Cushman’s notes—so I can superimpose that on the plat made by you—on exhibit “S.”

A. I can either plat it on exhibit “S” or put it on another plat.

The COURT.—Put it on another plat; make it to the same scale so that I can see where the difference, if any, is.

(WITNESS EXCUSED.) [977—827]

The defendant, to further maintain the issues on its part, introduced as a witness WILLIAM M. EBNER, who, then being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of William M. Ebner, for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. Your name is William M. Ebner?

A. Yes, sir.

Q. You now reside in California, do you, Mr. Ebner?     A. Yes, sir.

Q. Did you ever reside in Alaska?     A. I did.

Q. When did you first come to Alaska?

(Testimony of William M. Ebner.)

A. In 1890.

Q. What was your business, Mr. Ebner, when you were in Alaska? A. Mining.

Q. How long did you stay here?

A. Until 1909.

Q. Just briefly state to the Court what experience you had during this period of time, in mining in Alaska, and by this I don't mean for you to go into detail too much, but as to where and at what points in Alaska you did any mining?

A. In 1891 I had charge of what is now called the Perseverance mine; and I am not sure, 1901, '02 and '03; in 1904 I did some mining on what is called Dora group; in 1905 I leased and operated what was afterwards called the Ebner mine, and from that time on up to 1907 I operated the Ebner mine.

Q. Now, this mining that you did on what is called the Perseverance [978—828] property, where is that property with reference to the property of the Ebner Gold Mining Company?

A. It is in a southeasterly direction, probably on a straight line two miles distant from the Ebner property, southeast; there is the Ebner property (indicating), the Ebner Company and then comes the Perseverance.

Q. The Perseverance property is still further up Gold Creek? A. Up at the head of Gold Creek.

Q. In Silver Bow Basin? A. Yes.

Q. All of this property that you have just mentioned is in what is known as the Juneau Gold Belt, is it? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. You say you mined at the Perseverance for how many years?     A. Three years.

Q. Did you have a stamp-mill up there?

A. Yes, sir.

Q. What capacity, Mr. Ebner?

A. Ten-stamp mill.

Q. Where was that stamp-mill that you ran with reference to the 100-stamp mill that the Perserverance Company afterward built?

A. It was in the creek, or on the flat across the creek, probably 100 or 150 feet from where the 100-stamp mill was built.

Q. The one that they built was on the right bank of the creek as you went up the creek, a little bit?

A. Yes, sir.

Q. And yours was down the creek?

A. Down the creek on the left-hand side.

Q. Did you mine or take ore from any of the claims that went to make up the Perseverance group?

A. Yes, sir.

Q. And now owned by the Alaska-Gastineau Company? [979—829]     A. Yes, sir.

Q. Now, you said you did some mining on the Dora group—where is the Dora group with reference to the Ebner property?

A. The Dora group adjoins the Ebner on the northwest.

Q. That is the same group that is marked on the Defendant's "S" here "The Dora Group," is it?

A. Yes.

Q. I will ask you, Mr. Ebner, just to step over and

(Testimony of William M. Ebner.)

look at this map and acquaint yourself with it so I can ask you some questions. Now, what year did you say you commenced mining the Ebner Gold Mining Company's property? A. In 1895.

Q. You are the same Ebner that that property is named for, the Ebner Gold Mining Company, are you not, Mr. Ebner? A. Yes.

Q. What kind of a stamp-mill did you have on there when you first commenced?

A. A 10-stamp mill.

Q. Will you look at Defendant's Exhibit "S" and see if you recognize the location that that stamp-mill was in when you first commenced operating on this property?

A. This in black marked "Ebner Mill" represents the mill.

Q. That was first a 10-stamp mill, you say?

A. Yes, sir.

Q. Did you afterwards increase the number of stamps? A. Yes, I added five stamps.

Q. When did you add those five stamps?

A. I think in 1902.

Q. Just explain to the Court, Mr. Ebner, in a general way what, in the way of buildings, air-compressors, and so forth, were on this property when you first went into possession of it to work it?  
[980—830]

A. Well, in all there was a 10-stamp mill, and a building, a boarding-house and the blacksmith-shop—an old blacksmith-shop, and then a blacksmith-



(Testimony of William M. Ebner.)

shop at the mine, and the tram connecting the mine with the mill.

Q. What improvements, if any, did you afterwards put upon it during your working of this mine, in the way of buildings?

A. After I built an addition to the boarding-house, I built two new blacksmith-shops, and a boiler building and a building down in the canyon at the creek for the compressor and the stamp-mill.

Q. You never did do anything with that plant down in the gulley there for the stamp-mill, did you, except that you did at one time intend to put stamps in it?

A. No, sir; all I had in there was an electric light plant and a compressor plant; that was all the machinery that was put there.

Q. Now, Mr. Ebner, over how many years did you operate this 10 and 15-stamp mill?

A. From 1895 to and including the season of 1907—that would be about 12 years.

Q. From where did you get your ore that you put through this mill during that time?

A. Most of it from what we call vein No. 2.

Q. Do you know whether or not those workings and the vein are indicated on this map, Mr. Ebner—now, look at it and see.

A. Yes, the workings are indicated.

Q. By the little dotted lines?      A. Yes, sir.

Q. One called “Lower Tunnel”?      A. Yes, sir.

Q. And another called “Upper Tunnel”?

A. Yes.



(Testimony of William M. Ebner.)

Q. And "Upper Line of Open Cut"? [981—831] A. Originally there were open cuts.

Q. The workings, then, that are indicated on this map shown on the Crown Point claim and Keystone lode claim are some of the old workings, are they?

A. All that which is indicated on this map by the old workings. Most of my workings were confined to what we called "Lead No. 2." In 1894 I milled something like 650 tons from what we called "Lead No. 1."

Q. That is marked down there "1888—Tunnel"?

A. Yes; that is where you see the tunnel there; there is a glory-hole around that, close to that tunnel; it is about 650 feet from there to the lower tunnel out to the mill.

Q. What was your purpose in going down there?

A. That was for the purpose of ascertaining the values.

Q. Now, can you tell to the Court approximately about how much underground work—tunneling and open cuts—that show upon the ground up there that were made while you were working this property?

A. In tunnels and cross-cuts, raises and shafts, there were approximately 2700 feet altogether.

Q. Do you know approximately how many tons of ore you put through those mills? A. Yes, sir.

Q. How much?

A. Including the season of 1895 to the time that I closed down in 1907 there was approximately 140,000 tons.

(Testimony of William M. Ebner.)

Q. Do you know about the general average value of that ore body that you put through the mill?

A. I know what the average for the total—that is the net results, the net recovery.

Q. What was it?

A. Three dollars and thirty-five cents per ton.  
[982—832]

Q. Now, where did you get your water, Mr. Ebner, for milling this ore?

A. From Gold Creek, at a point near the Ebner dam.

Q. About how far above your old stamp-mill?

A. Nine hundred and fifty feet approximately, I think—about that.

Q. Do you know where the new high-line flume has been built upon that property?

A. I know about where.

Q. Where is the intake of that flume with respect to that old dam?

A. I think it is right at the old dam; in fact, I know it is right at the old dam; the intake is on the north side of the creek.

Q. Now, Mr. Ebner, I will ask you if you have been out and over this property since you came up here on this trip?

A. I have been up there; been through the lower workings; the tunnel that is now there, the tunnel that has been driven, and the operations that are being carried on, and cross-cuts at the present time.

Q. Now, since you have left here, Mr. Ebner, who has been carrying on the work on this property for you?

(Testimony of William M. Ebner.)

A. Why, when I was here last Mr. Mackey was driving this tunnel, and I understood it was under the direction of Mr. Underwood, or the California-Nevada Copper Company.

Q. You know Mr. Bent, don't you? A. Yes.

Q. You know when Bent and his party were here in 1910? A. I wasn't here at that time.

Q. Did you sell out your interest in this property before this new work was commenced on it, or did you still hold an interest?

A. I sold out; I sold out the property in 1908.

Q. Who were the people back east that you had your dealings with? A. F. L. Underwood. [983—833]

The COURT.—When did you say you sold out?

A. In 1908—March, 1908.

Q. You remember when Mr. Tripp went into the possession of this property to work on it, don't you?

A. I knew about it soon after I sold out, who was in possession.

Q. You know who Mr. Tripp was working under—under whose directions he was working?

A. Yes, sir.

Q. Whose?

A. Under the direction of Mr. Bent and Mr. Underwood.

Q. Mr. Underwood is the man you say you had the contract for the sale of your property with?

A. Yes, sir.

Q. You were up here in 1910? A. Yes, sir.

Q. What part of 1910?

(Testimony of William M. Ebner.)

A. I think in the latter part of November and December.

Q. Now, just explain to the Court in a general way what work there was in the way of tunnel work—tunneling, cross-cutting and upraising—that you have observed done upon this property between the time you quit work, when you turned it over to Underwood or his people, and the time you visited it last.

A. There was this long tunnel—I haven't measured it, but they told me that it is 3,500 feet long.

The COURT.—You say you sold out to Underwood?     A. Yes, sir.

The COURT.—Do you mean you sold your stock in the Ebner Gold Mining Company, or that you sold the property itself?

A. Sold the stock—in other words—

The COURT.—Was the title to the property in the Ebner Gold Mining Company, or was it in you individually?

A. The Ebner Gold Mining Company. [984—834].

The COURT.—And you sold a majority of the stock to Mr. Underwood?

A. Yes. You see we sold out; that is when I received the first payment. But the papers were closed in March.

Q. You have never operated the property since that time, Mr. Ebner?     A. No, sir.

Q. Now, you say that since you quit operating the property you have visited the property and know

(Testimony of William M. Ebner.)

approximately what work has been done upon the property since you turned over your stock or had your agreement to turn over your stock to Mr. Underwood? A. Yes, sir.

Q. And you have examined it within the last few days, haven't you, Mr. Ebner? A. Yes, sir.

Q. You went up there for that purpose?

A. I did.

Q. Who was with you most of the time while you were on the property?

A. The first time there was Mr. Noble, and Mr. Anderson and Mr. Muir; the last time it was Mr. Muir and myself.

Q. Mr. Muir has been with you each time you were up there making these examinations?

A. Yes, sir.

Q. Now, you spoke a while ago, since you had turned over your stock to Mr. Underwood that a long tunnel had been run which you said you had been given to understand was approximately 3500 feet long—I will ask you to look at Defendant's Exhibit "S" and state if the tunnel marked "New Tunnel" on there is the tunnel you have reference to?

A. That is the tunnel I have reference to. [985—835]

Q. Now, besides that tunnel have you seen any other underground work that has been done there since you turned your stock over? A. Yes, sir.

Q. Just describe in a rough way to the Court what it is.

A. I don't know just what distance in, but I



(Testimony of William M. Ebner.)

should say something like 3,200 feet—something like that—where those surveys are marked on that, not at that point but somewhat beyond.

Q. You mean beyond the word “Crown Point”?

A. What I mean, these workings, the old workings, has a well-defined solid slate, gray slate—footwall; probably the best defined footwall there is in any part of this country; it is well defined, and that same footwall shows in the lower workings; and in this new tunnel each way from that footwall, are other tunnels or drifts for about a distance of about 700 feet in each direction; quite a number of cross-cuts away from the footwall in different directions, some following in at right angles and some of them at other angles, and developing what you might call the same body of ore that shows on the surface. In other words, in some places here the ore body shows 100 feet wide or more, and going along where some of the cross-cuts have been driven in far enough it is probably 40 feet or 60 feet, but everywhere that entire 1400 feet—going 700 feet in each direction—it is approximately—that—there are numerous cross-cuts, and they all show the same character of ore that is found up in the workings—practically the same characteristics, the same mineral and the same kind of mineral.

Q. Do you know at approximately what depth this new tunnel is below your old workings? [986—836]

A. I know approximately, because I had that surveyed years ago, and at that time I knew just what the distances, the vertical distances was—about 440



(Testimony of William M. Ebner.)

feet according to my old measurement, but just what these distances are I don't know only what Mr. Muir has told me.

Q. Now, I will ask you, Mr. Ebner, if you ever had occasion to have anyone examine with you, and if you also examined, the amount of ore that has been developed by reason of your working in the old workings, leaving out any account of what ore body you found in this new tunnel?

A. Yes; in 1906, Professor Crosby made a very lengthy examination of the Ebner mine, and also the properties of what is called the Dora Group—the Dora properties, and some other properties, and he gave me figures as to the amount of ore he said was developed on the Ebner property.

Q. Did you go over that with him?

A. He told me there were twelve million tons developed on the Ebner property; I asked him how he got at that measurement and he explained it to me—went over it, went through the tunnels, and more-over than that we had accurate maps at that time—of all of the workings—and he explained to me how he arrived at that measurement.

Q. Well, as a mining man what do you think of it—was it a fairly good estimate of what there was there or not?

A. A fairly conservative estimate, I think, the way those things are usually estimated.

Q. Now, Mr. Ebner, the new tunnel that you have described, and the other drifting or cross-cutting that you have testified concerning, and what you saw

(Testimony of William M. Ebner.)

in there—I will ask you in your judgment as a mining man how much ore has been developed there, taking into consideration the old workings and these new workings you have testified concerning? [987—837]

A. Well, a conservative estimate, I would say that these lower workings have at the least calculation more than double the original of 12 million tons.

Q. Now, aside from this underground work, Mr. Ebner, there has been a high-line flume built from the old Ebner dam around to the Cape Horn property—Cape Horn claim—that has been constructed since you turned over your stock to Mr. Underwood, has it not? A. Yes, sir.

Q. You had nothing to do with the building of that flume line? A. No, sir.

Q. Do you know or remember approximately, Mr. Ebner, how many mining claims, and the number of them, there were that constituted the Ebner Group at the time you first took charge of that property and mined it?

A. Why, about the same as now, I think; there was eight or nine.

Q. There has been some new locations made since, hasn't there?

A. Yes, been some new locations made.

Q. Could you look on this map and point out to the Court approximately what the claims were that constituted the Ebner group when you first went into possession of it?

A. The Lotta Claim, the Taku lode, the Keystone,

(Testimony of William M. Ebner.)

the Golden Fleece, the Grand Review, and the Jewel and the Crown Point.

Q. What other locations were made by you for the Ebner Company since that time?

A. I located—that is they were located in my name originally, the Parish No. 1 and 2, and the Cape Horn.

The COURT.—What did you say about the Parish Lode Claim?

A. The Parish No. 1 and 2 and the Cape Horn and the Eureka.

Q. Did you name them all?

A. Yes, sir. [988—838]

Q. Did you name the Eureka? A. Yes, sir.

Q. You didn't locate the Auk Chief?

A. No, sir.

Q. The Taku Queen Lode Claim, did you locate that?

A. No, sir; I located nothing outside of that except some mill sites adjoining the Cape Horn Lode, the original Cape Horn Lode; a portion of that is now the Cape Horn No. 2.

Q. There is a fractional placer claim up here somewhere, Mr. Ebner (indicating)?

A. Yes, a fractional placer claim.

Q. Where is that fractional placer with reference to the Ebner dam?

A. Some of it is right close to the Ebner dam; it is this fraction in here between the Humboldt—the end of the Golden Fleece and the end of the Humboldt—that little fraction in here.

(Testimony of William M. Ebner.)

Q. Now, I will ask you, Mr. Ebner, what official position you were occupying with the Ebner Gold Mining Company at the time you made these several locations?     A. I was the president.

Q. And you were also manager, were you not?

A. Yes, sir.

Q. Running the mines up there?     A. Yes, sir.

Q. I will ask you if these locations were made by you individually or made for the Ebner Gold Mining Company?

A. They were all made with a view of being turned in to the Ebner Gold Mining Company.

Q. And they have all been turned in?

(Not answered because of objection.) [989—839]

Q. What was the reason of your locating these claims for the company—did you make discoveries on them?     A. I made discoveries.

Q. This, Mr. Ebner, is Book No. 5 of Placers, part of the records of the Recorder of Juneau Recording District—I call your attention to Page 147, which purports to be a location notice of the Cape Horn mill site—I will ask you if you are one of the parties that made that location?     A. Yes, sir.

Q. You know Mr. Lovett, whose name is also signed to this mill site notice?     A. Yes, sir.

Judge WINN.—We now offer in evidence, if your Honor please, page 147 of Book No. 5 of Placers—and we will substitute a certified copy for the location notice that is recorded on that page.

(Whereupon said location notice was received in evidence and marked Defendant's Exhibit "D-1.")

(Testimony of William M. Ebner.)

Q. Now, Mr. Ebner, I will ask you for what purpose was that mill site located?

A. At the time I located that for myself, but with the intent—my principal purpose was to use it in the near future for the Ebner Gold Mining Company.

Q. As a mill site? A. As a mill site; yes, sir.

Q. Where was that location with reference to the Cape Horn No. 2 Lode Claim, as indicated in Defendant's Exhibit "S"?

A. It covered all, I think, of Cape Horn Lode Claim No. 2—not all of it, but it covers all of this portion (indicating).

Q. That is all— [990—840]

A. All of that which adjoins the Cape Horn on the southwest side line and tying it on to these placer stakes as they existed at that time.

Q. When did you change or make any location of this particular piece of property known as the Cape Horn No. 2?

A. In 1908 I had the Cape Horn officially surveyed, the same as I would have it surveyed for patent; I found then that on this side line there were some quartz croppings that looked very good, and that there would be sufficient quartz in sight to make a quartz location, so I located the Cape Horn No. 2 over the original mill site.

Q. Now, Mr. Ebner, you stated that you took that originally as a mill site; what else did you have in mind at that time as to the working of the Ebner property—that is, did you expect to continue work-



(Testimony of William M. Ebner.)

ing it at the old mill or did you make this mill site location out in contemplation of opening up the property on another plan?

A. Well, you want all of my plans, Judge, from the beginning?

Q. You might go over it, Mr. Ebner, slightly; you said you built the old air-compressor, at one time expecting to put 30 or 40 stamps in it; just explain the situation, what you were expecting to do with that building and then what you expected to do down about Cape Horn?

A. That was in 1897, I believe, the building where the air-compressor was built, and I expected to put in 40 stamps; that air-compressor was placed there for the purpose of getting power at the old place; I couldn't get power enough—only had 110-foot head—and couldn't operate the compressor or the 15-stamp mill, or even the 10-stamp mill when the water got a little bit low; so my plan was to have my compressor plant,—in the meantime to install 40 stamps, and once I had my 40 stamps installed I would bring my pipe-line over to Shady Bend and start [991—841] a working tunnel on practically the same line as that is there now.

Q. There is a letter on file in this case, Mr. Ebner, that you wrote to Mr. Tripp; you have seen that letter, I showed it to you? A. Yes, sir.

Q. The one that Mr. Tripp wrote to you?

A. Yes, sir.

Q. You are the same Ebner mentioned in that letter? A. Yes, sir.



(Testimony of William M. Ebner.)

Q. What, if anything, else, did you do, Mr. Ebner, with this plan in view of opening up and developing this property before you turned over the workings—did you do anything else except make these locations of mill sites and so forth—did you ever commence any tunnel there at Cape Horn?

A. I had the survey made.

Q. When did you have that survey made?

A. I think that was in 1906.

Q. Do you remember who made it?

A. I think that Lloyd Hill made it for me; I had a survey made along the line—it may not be precisely on the line of that tunnel, but the opening was at the same spot; and also had a survey made from that to the beach—several surveys.

Q. Down to the beach near Juneau?

A. Yes, sir.

Q. Did you do anything else in pursuance of that plan that you remember of, or is that about all?

A. That is about all that I did in 1906.

Q. What was the reason you didn't carry out this plan, Mr. Ebner?

A. The chief reason was we didn't have money enough—short of funds. [992—842]

Q. Well, did you have amongst your plans there the building of a mill down near the mouth where you had this tunnel surveyed? A. Yes.

Q. And what further plan with respect to having the water brought to that point had you in mind at that time?

A. My plan of bringing the water there was to

(Testimony of William M. Ebner.)

drive this tunnel and then bring in the water from the dam to this underground tunnel and the raise, and to bring the pipe in and run it through the tunnel and keep it away from the cold and the snow—that was my plan.

Q. And to take it from Gold Creek at what place?

A. At the Ebner dam.

Q. The old Ebner dam?      A. Yes, sir.

Q. Just where the water is taken from by the new flume line that has been built—the same dam?

A. The same dam.

Q. Now, I will ask you, Mr. Ebner, what, if anything, do you know about the side lines or any of the lines of the Lotta Lode Claim having been brushed out by yourself or under your instructions while you had charge of this property?

A. I had the side line of the Lotta Lode Claim brushed out in 1893, before I had anything to do with the property, but did at that time locate and own a good portion of what is called the Dora Group.

Q. What was your object at that time in brushing it out?

A. I wanted to get in touch with the side line for the purpose of tying on the Etta and Forrest Lode claims.

Q. That is the Etta and Forrest lodes that are shown on this exhibit "S" of the defendant?

A. Yes, sir. [993—843]

Q. Did you find any corner posts or monuments along on the side line or the end line of the Lotta claim in 1893 when you had this brushing out done?

(Testimony of William M. Ebner.)

A. Yes, sir.

Q. Had you seen any of the corner posts or monuments that mark the boundaries of the Lotta Lode Claim prior to 1893?

A. I have seen them, I think, the year before in 1892, when I first purchased a portion of what is now the Dora group.

Q. Who was with you when you saw them, do you remember?

A. A man by the name of Sagemiller.

Q. In 1892, referring to this map, Defendant's Exhibit "S," I wish you would state to the Court just what monuments, as well as you remember, you found on the Lotta Lode Claim, and if any of them are these monuments?

A. I found the southwest corner, corner No. 5, up among the trees; No. 6 we found, and we found several of these (indicating); we just found two or three of those; Mr. Sagemiller was very familiar and he knew all about them.

Q. That is, No. 6 and No. 5 as shown on Defendant's Exhibit "S"? A. Yes, sir.

Q. Do you remember what was carved on there—what legend was scribed on or put on in some way in 1892?

A. I don't remember exactly, but I know the survey No. was 87, the Lotta; I don't remember all of it; I know it belongs to the Lotta claim; there wasn't any carving on them; they were two by twos, or three by three, something like that—they were painted.

(Testimony of William M. Ebner.)

Q. You didn't have anything to do with the surveying of that claim for patent?

A. No, nothing; that was patented before I came here.

Q. Now, did you see any of those corner posts of the Lotta in 1893? [994—844]

A. Yes, the same posts.

Q. When do you remember of seeing them next?

A. I saw them next soon after I came into possession of the Ebner property, about 1896-1895, and I had them brushed out occasionally and kept in touch with the corners; the initial posts No. 5 and those going up the hill.

Q. Those going up the hill?

A. Yes, sir.

Q. Along in the neighborhood of 3 and 4, through there right up the hill?

A. Right about there where you get it high there.

Q. You mean the Taku lode? A. Yes.

Q. And from there right on up on the end line of the Keystone and Crown Point?

A. Yes, sir; this one was standing (indicating).

Q. That is the one that is down at the fractional lode claim?

A. That one there and this one here (indicating), and that one there; this is up in the gulch there; I always knew the location of that one, and that one and this one here; and this one here and this one set over here close to the Webster mill site.

Q. The one referred to as the Webster in the

(Testimony of William M. Ebner.)

corner, that is on the end line of the Taku lode and is one of the corner posts of the Webster mill site?

A. Yes; it is set at the intersection; there are two road posts there.

Q. Around the claim—

A. Yes, the original mill site here was located afterwards—that post was in place; that is up above the road about 150 feet.

Q. These other posts that you were pointing out were corner posts of the Grand Review, Jewel lode, and then down on the Webster [995—845] mill site, and on the line of the Taku lode claim—south-western line of the Taku lode claim—those are some of the posts you were pointing out? A. Yes, sir.

Q. When do you remember seeing those posts along there, Mr. Ebner?

A. Those that were outside the Lotta I don't know just when—just what years, but I think it was about the same year, about 1896; after I had possession of the property, the Ebner Gold Mining Company, owned it, I had most all of the lines brushed out for the purpose of finding the posts and preserving them.

Q. Now, do you remember seeing any of those corners which you have just mentioned at any time later—do you have any remembrance of it?

A. Yes, I saw them later—I don't know just how late.

Q. Let's get down to the Lotta—we left off seeing some of those corner posts in 1899, I believe you said.



(Testimony of William M. Ebner.)

A. I saw, or I remember the corner post No. 5 of the Lotta here and another one up here; another one up here near the Royal, and when I located the Parish that was my guide; I came out here in locating the Parish 125 feet and put in this end.

Q. That is the lower end line of the Lotta?

A. Yes, sir; I had that brushed down to the creek, and a portion of it on this side.

Q. Post No. 6?

A. Yes, Post No. 6 was in a clump of trees, but when the brush was away you could see it from corner No. 5.

Q. You could look across from No. 5 and see corner No. 6?      A. Yes, sir.

Q. I will ask you if you were on that property in 1908, Mr. Ebner, and went over this side line of the Lotta claim?      A. Yes, sir. [996—846]

Q. There has been some testimony, I believe, by Mr. Tripp and Oscar Harri about brushing out that was done on the lower side line of the Lotta in 1908—were you with those parties?      A. Yes.

Q. Just state what you did about brushing out the lower side line of the Lotta claim at that time?

A. In 1908 I got Mr. Wettrick and Mr. Hill and we surveyed these Parish claims here, and also the Cape Horn and the Eureka claims; and we brushed out the lower side line of the Lotta; it was all brushed out and it was brushed out good and wide, well cut out down close to the ground all the way on the lower side line of the Lotta as shown on exhibit "S."



(Testimony of William M. Ebner.)

Q. What stakes or corners do you remember having seen there in 1908 either on the side or end line or anywhere on the Lotta claim?

A. I saw this post No. 5, and this center post here, 4; and this one, 6; and this post, I don't know what number that is; that is on the lower side line of the Lotta and the end line of the Forrest.

Q. That is just below corner post No. 6 on this Defendant's Exhibit "S"?

A. Yes, sir; right alongside of the road.

Q. Now, when, if at any time, Mr. Ebner, were any of the old posts reset or new posts put in the place of any of these along the lower side line of the Lotta claim?

A. Post No. 5, the original post was in place, and, I think, in 1908 we put a large stake alongside of it and nailed the original post that was put there when it was surveyed for patent, or which was there in 1892 or '3 when I saw it first—nailed that on to the large stake; and post No. 6 was a small post in 1908, and just the same kind of a post that I saw there in 1892 and '3. [997—847]

Q. Now, to identify these posts again, I hand you Defendant's Exhibit "D" and ask you to look at that and see if you identify that as being a photograph of any one of these posts; and if so, state in your judgment which one?

A. This is what I call post No. 6, and the way I identify that is by those trees there; it is probably 150 feet above the road just as you cut through the dam there.

(Testimony of William M. Ebner.)

Q. Did you ever notice any blazing on any trees, Mr. Ebner.

A. Yes, I noticed the blazing the first time I saw the post; they are very easy to see.

Q. Where, with respect to this corner post No. 6, was the blazing?

A. Right close; I think—I wouldn't be sure just what trees, but they are very distinctly visible; there was blazing there that had some connection with this post and some marks, but I don't just remember what the marks were on the blazing.

Q. Now, I will hand you Defendant's Exhibit "Y," which appears to be a photograph of the post there, and ask you if that looks familiar to you?

A. Yes, this is post No. 5.

Q. Does that look anything like the post you saw there in 1908?

A. It is the same, yes; the side post doesn't show, that is nailed on to this; there is the rock—it looks just the same.

Q. Where is that post with reference to the cabin that is on the right-hand side of the creek?

A. Southeasterly direction from the cabin, not far from the cabin.

Q. What claim is the cabin on?

A. The cabin is on the Lotta claim.

Q. I will ask you to look at Defendant's Exhibit "S" and state if this place is properly located as the cabin? A. About there. [998—848]

Q. The post you are testifying concerning now is over next to the cabin? A. Yes, sir.

(Testimony of William M. Ebner.)

Q. No. 5. Here is another one, Mr. Ebner, Defendant's Exhibit "X"?

A. That is the same post only showing the line going up the hill, showing the end lines of the Lotta and the Taku Lode Claim.

Q. Do you remember of having seen that post there in 1908?

A. Yes, sir; the large post was put there in 1908, if my recollection is right; the small post is right alongside of it; that was really a Parish post put in there for that purpose, and the other one nailed to it; the other one is standing there and rotted off.

Q. Is it a Parish or Lotta post?

A. Both, I think, but the larger post was put there, I think, in 1908, right alongside of the original post and then the original post nailed onto it.

Q. Here is Defendant's Exhibit "W"—do you recognize that as a post being anywhere on the Lotta boundary lines in 1908?

A. Yes, sir; that is the same post.

Q. And did I understand you to say something about a stake being a Parish stake?

(Not answered because of objection.)

Q. Now, I will ask you, Mr. Ebner, as to whether or not there were any stakes along on the Parish No. 2 lode claim in 1908 when you were down there?

A. Yes, sir.

Q. Do you remember what stakes they were?

A. The southeast corner stake, this stake (indicating)—that is following the lower side line of the Lotta on the lower side line of the Royal 125 feet;

(Testimony of William M. Ebner.)

that stake was there. [999—849]

Q. The stake that is put 125 feet along the continuation of the Lotta lode claim and is marked No. 3?

A. I don't know what it is marked.

Q. Marked with the figure three?

A. That was an alder stake; and this stake was there, No. 4, down towards the creek here.

Q. Do you remember of ever seeing any other stake, along the upper side line of the Parish in 1908?

A. This stake (indicating) I don't remember that stake was there; this stake was there (indicating).

Q. That is, the southwest corner stake of the Parish lode was there?

A. I call that the northwest; those stakes, in 1899 when we located those claims, we put in alder stakes—didn't have any square stakes, and we squared them up, and we found most all of those stakes when Mr. Wettrick and Mr. Hill surveyed the claim.

Q. In 1908? A. Yes, sir; in 1908.

Q. Did you reset any of those stakes, do you remember? A. Yes, sir.

Q. Were you up on this property in 1910, so you could see any of the stakes on there, Mr. Ebner?

A. Yes, sir.

Q. What time? A. I think in November.

Q. Sometime in November? A. Yes, sir.

Q. Of 1910? Yes, sir.

Q. What, if any, stakes did you see at that time?

A. I saw stake No. 5; and some on the end line, I

(Testimony of William M. Ebner.)

don't remember just how many, on the south end line, and stake No. 6. [1000—850]

Q. How do those stakes look with respect to the ones you saw there in 1908?

A. Just the same stakes.

Q. And how with respect to the place they were in—the same place, or were some in another place?

A. They were the same place.

Q. Now, I will ask you, Mr. Ebner, if you have ever noticed any springs flowing into Gold Creek between where the dam of the Alaska-Juneau Company is now and the Ebner dam—any springs?

A. Yes, sir; there are two very large springs, that is, quite large springs.

Q. You never measured them so as to get the capacity of them, did you?

A. No, never measured them.

Q. I will ask you, Mr. Ebner, if you have noticed those springs there in the different seasons of the year? A. That is in the summer and winter?

Q. Yes, sir. A. Yes, sir.

Q. Have you ever noticed about the flow of them in the winter-time? A. I have.

Q. Is there any water coming out then?

A. Yes, it is just about the same winter and summer except when it rains very heavy, it is a little heavier, but it is about the same winter and summer.

Q. Mr. Kinzie, I think, testified on his direct examination in this case, Mr. Ebner, that he sometime had a conversation with you about plans of opening up and developing this property—did you ever have



(Testimony of William M. Ebner.)

any conversation with him concerning your plan?

A. No, sir. [1001—851]

Q. I believe that more particularly his conversation that he stated he had with you was something about the construction of **this building** that you afterwards put an air-compressor in—did you ever have any conversation with Mr. Kinzie in which you said anything to him about your plans of opening up the property with respect to this building?

A. I never talked to Mr. Kinzie about any plans whatsoever.

Q. Do you remember the approximate time you located what is called the Fractional placer claim, on which, I believe, or near it, the dam was constructed?

A. I don't know the approximate time.

Q. You don't remember what year?

A. I don't remember just what year, but that was located at a different time, I know; Charley Garside located that for me, and it must be way back in the early '90's.

Q. Mr. Ebner, what has been your experience with the flow of water in Gold Creek while you were mining up there, in a general way, both the summer and winter seasons—if you will explain that in a general way as to the quantity of water that there is during the seasons?

A. You mean the difference between winter and summer?

Q. Yes, sir.

A. About the number of inches in the creek?

Q. No, I don't care about the number of inches—it



(Testimony of William M. Ebner.)

is a creek that is lower in winter, isn't it?

A. Lower in the winter, and lots of water in the summer.

Q. About what season, or over what part of the year do you think there would be water in Gold Creek enough to fill both the Alaska-Juneau Company's flume and the Ebner high-line flume, and I just want simply a rough estimate of that, if you can give it to me, Mr. Ebner?

A. I don't know how much water they carry.  
[1002—852]

Q. How has it been with you in the winter season with respect to getting water enough to run your 10 and 15-stamp mills while you were operating them—could you get water enough to do that all winter?

A. Most of the time; sometimes it would get down so that I could only run one side of the compressor; the water would get down sometimes to four or five hundred inches at the Ebner dam.

Q. Of course, it depends altogether on the coldness of the winter?

A. It depends on the seasons; some seasons it varies a great deal, the winter sets in without any snow on the ground and the water is very low, and it freezes hard before there is snow on the ground.

Judge WINN.—I think that is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When it rains you have lots of water, and when it freezes you are short, isn't that true, Mr. Ebner?

A. Yes, sir.

(Testimony of William M. Ebner.)

Q. You started and worked and operated quite a small mill up near where the Perseverance mill was afterward constructed? A. Yes, sir.

Q. A small 10-stamp mill? A. Yes, sir.

Q. That was taken out by a slide? A. Yes, sir.

Q. And then you went down to the Ebner property and took charge of that? A. Yes, sir.

Q. That was in what year, Mr. Ebner? [1003—853] A. 1895.

Q. There was a 10-stamp mill on the property at that time? A. Yes, sir.

Q. And you afterwards enlarged that by putting in 5 more stamps, and made it 15 stamps?

A. Yes, sir.

Q. You used the water of Gold Creek by taking it out of the same Ebner dam that has been referred to here as the Ebner dam? A. Yes, sir.

Q. And putting it back in the creek immediately below the mill that you have been operating?

A. Yes, sir.

Q. This mill as shown upon this exhibit "S" is the old Ebner mill? A. Yes, sir.

Q. Then you ran along a while and started to build a new mill on the Lotta claim? A. Yes, sir.

Q. That was about what year?

A. That was in 1897.

Q. You put up a mill building? A. Yes, sir.

Q. To hold 40 stamps? A. Yes, sir.

Q. With the intention of enlarging it to 100 stamps later on?

A. No, I don't know that we ever figured on that

(Testimony of William M. Ebner.)

much—40 stamps was about as much as I could see at that time.

Q. You wouldn't say now, Mr. Ebner, that it didn't used to be your intention to put in 100 stamps there, would you? A. Not there; no, sir.

Q. There was an excavation made there for a larger mill, wasn't there? [1004—854]

A. Nothing except the building.

Q. The excavation is on the ground now, isn't it, Mr. Ebner?

A. Not where it would be safe to build a mill.

Q. You wouldn't testify that it wasn't your intention or the intention of the Ebner Gold Mining Company, to put in a mill there, would you?

A. No, sir.

Q. Your intention and that of the Ebner Gold Mining Company was the same, because you were practically the company, were you not?

A. Yes, practically the same.

Q. You not only held the control of the stock, but you conducted the affairs, and you were the company, in most respects at least? A. Yes, sir.

Q. Now, when did you first form an idea of building a mill down at—did you ever have an idea of building a mill in the neighborhood of where Mr. Mackey has since excavated? A. Yes, sir.

Q. In that same spot? A. About that same spot.

Q. How near? A. Practically the same spot.

Q. When did you form that idea of building a mill there?

A. That was soon after my large suit in the United

(Testimony of William M. Ebner.)

States Supreme Court was decided.

Q. Do you remember what year that was?

A. That was in 1900.

Q. In 1900 you formed the intention of building a mill at that point?     A. Yes, sir. [1005—855]

Q. At that time, 1900, you had no intention of building on the Lotta claim—is that your testimony?

A. Not in 1900; no.

Q. Isn't it a fact that your intention to build a mill on the Lotta claim continued sometime after 1900?

A. My intention to build a mill, a 40-stamp mill on the Lotta was continued up to about the time the suit was brought claiming the right to foreclose the Ebner property; the case was tried here in the court; I won out in the court here, and that case was appealed by the plaintiff and decided in 1900.

Q. In 1903 you had some negotiations with Mr. Bradley looking towards the sale and purchase of the Ebner property by Mr. Bradley, didn't you?

A. Yes, some.

Q. The negotiations were carried on through Mr. MacDonald?

A. No, Mr. MacDonald had some talk with Mr. Behrends that—I was about to go away and Mr. MacDonald had some talk with Mr. Behrends; Mr. MacDonald didn't come to me; they *said would* like to go in there and make an examination, and told Mr. Behrends they would like to make an examination and he told them all right to go ahead. I left here and went down to San Francisco and all the negotiations I had with Mr. Bradley was to give him permission to

(Testimony of William M. Ebner.)

sample the mine, and then he wanted to know the price, and I gave him the price, that was practically all the negotiations we had.

Q. Didn't you tell Mr. Bradley your plan of development at that time—what your plans were?

A. No, sir; I did not.

Q. Didn't tell him you intended to put a 100-stamp mill on the Lotta?

A. No, sir; that never came up—never was mentioned. [1006—856]

Q. And you never advised Mr. MacDonald to that effect? A. No, sir.

Q. Either in writing or orally? A. No, sir.

Q. Now, I want to refresh your memory, Mr. Ebner—you know Mr. MacDonald was acting for Mr. Bradley at that time—he was Superintendent of the Alaska-Juneau Gold Mining Company?

A. He was Superintendent.

Q. It was the time Joe MacDonald was Superintendent of the Treadwell and also the Alaska-Juneau properties? A. Yes, sir.

Q. And was representing Mr. Bradley in the negotiations? A. Yes, sir.

Q. I hand you here a paper marked for identification Plaintiff's Exhibit No. 38, and ask you to tell me if that isn't the report that you and Mr. Behrends gave Mr. Bradley and Mr. MacDonald on the property at that time, in 1902 or '03, when those negotiations were pending?

A. I don't know anything about this at all.

Q. Have forgotten about it?



(Testimony of William M. Ebner.)

A. I haven't forgotten about this; this has nothing to do with the stock.

Q. That is a report given Mr. MacDonald and Mr. Bradley by the Ebner Gold Mining Company, signed by yourself as President, isn't it?

A. I know it is one of Denby's reports all right; not by me to Mr. MacDonald; I don't know anything about this; I think this is a report all right, but not for Joseph MacDonald, nothing like that—I don't know anything about it.

Q. That is a report made by Denby for you?

A. Made by Denby or Bart Thane, I don't know who.

Q. It says it was made by Denby, don't it?  
[1007—857]

A. It looks like Denby's report, yes.

Q. That is Denby's report to you first, and then it was given by you or Mr. Behrends to Mr. MacDonald?  
A. That might be.

Q. That is how it got to Mr. MacDonald—it is a report by Denby, Mr. Denby—Mr. Denby was a mining engineer and was working for you at the time, wasn't he?  
A. Yes, sir.

Q. And you took Mr. Denby's report and incorporated it in the report you gave Mr. MacDonald?

A. I never gave the report to Mr. MacDonald.

Q. Incorporated it in the report which was handed to Mr. MacDonald by Mr. Behrends?

A. That is the first thing I knew about that; I had no conversation with Mr. MacDonald about the examination; when I came back in the spring the exam-



(Testimony of William M. Ebner.)

ination was already made.

Q. The property was offered to Mr. Bradley, and that states the correct terms, does it not, on which you offered the property?

A. I don't know whether that was the correct terms or not.

Q. Just look at it and see for yourself?

A. So far as I recollect, I think it does.

Q. It contains the report of Mr. Denby besides the terms? A. Yes.

Judge WINN.—I object to the question, if your Honor please, the instrument is the best evidence of what it contains.

The WITNESS.—Yes, I think that states the terms.

Q. You don't personally remember, Mr. Ebner, of giving this to Mr. MacDonald? A. No, sir.

Q. Mr. Ebner, I don't think this states the date those negotiations were had with Mr. MacDonald and Mr. Bradley, the date [1008—858] was in 1903, was it not?

A. I don't remember just what year that was; I was thinking it was before that, but I won't be sure about it—I don't remember.

Q. This paper you say must have been given to Mr. MacDonald by Mr. Behrends, but you don't remember?

A. That is a part of Denby's report—and some terms added on—I don't know anything about that.

Q. You don't recall it?

A. No, sir; I don't; I had no talk with Mr. Mac-

(Testimony of William M. Ebner.)

Donald before I left here; Mr. MacDonald had all his talk with Mr. Behrends.

Q. It is possible that MacDonald got this report from Behrends, isn't it?

A. I don't know how he got it.

Q. Now, Mr. Ebner, in regard to these claims, this Cape Horn claim—that was located by you, in fact, for your own use, wasn't it, Mr. Ebner?

A. No, it wasn't—that is, I had this in mind, Mr. Hellenthal; I knew there was values there sufficient to make a *bona fide* quartz location, and my intention was to recover that ground with the driving of a long tunnel to the Ebner mine.

Q. You had two partners in that claim, didn't you?

A. That was when I located the Cape Horn and Eureka; I had my two prospectors in with me; they went out and done the hard work and I took them in with me.

Q. And they were taken in on the location of the claims with you?

A. They were taken in on the locations with me, but soon afterwards I bought them out.

Q. But they were taken and became joint locators with you? A. Yes, sir.

Q. That is true of the Cape Horn and Eureka both? [1009—859]

A. Both those claims; yes, sir.

Q. What you mean, Mr. Ebner, is that you located those claims with the object in view that if the Ebner Company needed them you would sell them to them, or otherwise make some negotiation about your stock

(Testimony of William M. Ebner.)

and dispose of the claims?

A. If I didn't own the Ebner property I would never have located those claims.

Q. You located them for your own use; they were not located as the property of the Ebner Company, were they?

A. They were located as my own property but with the view that they were to go in as the Ebner property, when we drove that long tunnel.

Q. They were located for your own use and as your own property, were they not?

A. Of course, if you look at it that way.

Q. And before the Ebner Company had a right to them, they would have to buy you out?

A. Would have to buy me out? I would do the same with the Ebner Company as I did with Underwood—I said, "Here are the claims and here are my plans, you better have all the claims so you can go ahead."

Q. And they were to pay you whatever price you agreed upon?

A. They went in with the properties of the company.

Q. And you never sold those claims to the Ebner Company? A. No.

Q. And they had no right to them until they paid you for them?

A. It was a good big portion of the Ebner Company.

Q. The corporation itself had no right to those claims until they paid you for them, had they?

(Testimony of William M. Ebner.)

A. You might put it that way—you might put it that way.

Q. When you had the negotiations with the Jualpa people, you divided the money between the Ebner Company and yourself and partners on that ground did you? [1010—860] A. Yes, sir.

Q. At that time the Cape Horn claim was still owned by you and your two partners?

A. Yes, sir.

Q. And the Ebner Company had no interest in them? A. No, sir.

Q. And you got \$8,000.00, I think, from the Jualpa people? A. Altogether; yes, sir.

Q. That flume was built part way over the Lotta and part way over the Cape Horn? A. Yes, sir.

Q. And you divided by giving the Ebner Company \$5,000.00 and you and your partners took \$3,000.00, is that right? A. That is right.

Q. It was your ground because the Cape Horn was your property?

A. There was a reason for that; I hadn't bought my two partners out; they still owned an interest and they were entitled to a part of the money.

Q. They were entitled to a part of the money?

A. Yes, sir.

Q. And they got their share, and you got your share, and the Ebner Company got its share of the money—that is right, isn't it? A. That is right.

Q. Now, the Cape Horn mill site was located in connection with that Cape Horn lode, wasn't it?

A. Yes, later on.

(Testimony of William M. Ebner.)

Q. Located in connection with the Cape Horn that you and Mr. Lovett located? A. Yes, sir.

Q. Lovett by that time had become interested in the Cape Horn [1011—861] lode in some way, hadn't he?

A. I think he did have an interest in the Eureka lode.

Q. And also the Cape Horn, and a Mrs. Zimmerman was also interested?

A. I don't remember; I am not sure about that.

Q. But anyhow the Cape Horn Mill Site was located in connection with this Cape Horn and this Eureka lode? A. Yes, sir.

Q. By you and Mr. Lovett? A. Yes, sir.

Q. Lovett was interested in them?

A. Lovett was my partner in any location that I made.

Q. You were mining partners together?

A. We were mining partners.

Q. That was outside of the Ebner Company?

A. He had no interest in that at all; but we had an understanding that for a nominal sum he would sell any interest he might have.

Q. Anything that he might have in the Ebner Company, that he would be willing to sell?

A. Yes, sir.

Q. Now, that mill site location remained attached to the Cape Horn and Eureka until about 1908, and then you located the Cape Horn lode, the Cape Horn No. 2—I am trying to get at the time you located that—1908, wasn't it, that you located it?

(Testimony of William M. Ebner.)

A. Yes, I think it was the latter part of August, 1908.

Q. That covered the mill site that you and Lovett had formerly located? A. Yes, sir.

Q. You found quartz stringers on it and thought it would be best to locate it as a lode claim?

A. I always supposed that quartz stringers were on the original [1012—862] Cape Horn lode, but afterwards I had it surveyed and found it was outside of the Cape Horn.

Q. And it would come on this mill site?

A. Yes, sir.

Q. And you located it as a quartz claim instead of a mill site because there was mineral on it?

A. Yes, sir.

Q. And that location you transferred to a man by the name of Martin? A. Yes, sir.

Q. And that is all you know about it, I suppose?

A. Martin bought it from me; I transferred it to Martin because at that time I understood Mr. Martin was the representative of the company that practically owned the Ebner property.

The COURT.—When was that?

A. That deed to Martin, I think, was a year ago last January.

Q. And up to that time the Cape Horn No. 2 was your property? A. Yes, sir.

Q. Then it became Martin's property?

A. Yes, sir.

Q. And what happened after that you don't know?

A. I don't know what happened after that; no, sir.



(Testimony of William M. Ebner.)

Q. Now, this high-line flume, Mr. Ebner, that has the grade and the same elevation that your old flume had, hasn't it? It takes the water out at the same place? A. Takes it out at the same place.

Q. And is on the same level with your old flume?

A. I don't know whether it is just exactly—it is approximately.

Q. The term "High-line Flume" is a technical term—the flume itself is no higher than the old flume line, is it?

A. I don't know why they call it the high-line flume; I know very little about that flume. [1013—863]

Q. Those trees that you spoke of, are they at corner No. 6 of the Lotta or at corner No. 5?

A. The northwest corner, what is known as No. 6.

Q. That would be down by the road?

A. The one up above the road, at the north end.

Q. Those trees are pretty large trees, aren't they?

A. Fair size trees—6 or 8 and some of them 12 inches in diameter.

Q. That is pretty large for trees in that country, isn't it? A. Yes; on that hillside.

Q. You say you thought at that time there was some blazing on them?

A. I know there was some blazing on them; and pretty well grown up.

Q. There are also some trees at corner No. 5?

A. Nothing but big alders there.

Q. Now when was it that the Jualpa people took the water out of Gold Creek when you had that

(Testimony of William M. Ebner.)

negotiation with them?

A. I am not sure about that—I think it was in 1897.

Q. 1897?

A. Along about '97 or '98; I wouldn't be sure about that.

Q. That was after you had made up your mind to build a mill on the Cape Horn claim some place, wasn't it?

A. Well, not fully at that time, but I expected to—I thought I recognized the fact that Shady Bend was the proper place to tap that Ebner mine with the new tunnel and to bring the ore out that way, and for at least a compressor plant there, or power there for a compressor plant; I had never fully decided whether that was the correct place for a very large mill, or to come down to the beach; and when I had my survey made I also had a survey made on the beach.

Q. You negotiated at one time with Captain Johnson, didn't you, to buy—

A. Yes, sir. [1014—864]

Q. Do you remember what date that was, Mr. Ebner—about what year?

A. I don't remember just what year that was, Mr. Hellenthal.

Q. That was about 10 years ago, wasn't it?

A. More than that.

Q. Twelve years ago?      A. Yes.

Q. Ten or twelve years ago?      A. All of that.

(Testimony of William M. Ebner.)

Q. Maybe along about 10 or 12 years ago, in that neighborhood? A. Yes.

Q. At that time you negotiated to buy a piece of ground on the beach here to put up a mill?

A. Yes, sir.

Q. The \$8,000.00 that the Jualpa people paid you was simply for the right of way across the creek there and for the water right?

A. Simply for the right of way.

Q. They were to get the water up out of the creek?

A. They were to have the use there just as long as we saw fit for them to have it.

Q. That would have taken the water away from you in the mill at Shady Bend, wouldn't it?

A. It would—I had a talk with the Jualpa people, and I said that there wasn't any objection to their using the water as long as we saw fit for them to take it; I wouldn't let them go on any patented ground to make a water location.

Q. They never posted a notice there or made a location? A. No; they told me they didn't.

Q. They actually took the water out of the creek, didn't they? A. They did part of the time.

Q. And if the water was taken there you wouldn't have it for [1015—865] Shady Bend, would you?

A. No.

(Whereupon an adjournment was taken until 10 o'clock to-morrow morning.)

(Testimony of William M. Ebner.)

MORNING SESSION.

August 4, 1914, 10 A. M.

WILLIAM M. EBNER, on the witness-stand.

Cross-examination (Cont'd).

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, you operated the Ebner property until what year?     A. 1907.

Q. 1907?     A. Yes, sir.

Q. And then you didn't continue to operate at the old mill?     A. Yes, sir.

Q. The old mill wasn't operated from that time on.     A. No, sir.

Q. But you continued, however, President of the Company while Mr. Behrends was Secretary?

A. Yes, sir.

Q. That was up to what time?

A. Up to two or three years ago; I don't remember exactly.

Q. Up to a couple years ago you were President and Mr. Behrends Secretary of the Ebner Gold Mining Company?     A. Yes, sir.

Mr. HELLENTHAL.—That is all. [1016—866]

Redirect Examination.

(By Judge WINN.)

Q. On that point, Mr. Ebner, do you know when Mr. Behrends ceased to be Secretary of the company?     A. No, I don't know just when it was.

Q. You don't know if you were President of the company all the time Mr. Behrends was Secretary?

A. No, I don't know; Mr. Behrends might have

(Testimony of William M. Ebner.)

been continued as Secretary.

Q. I will ask you if you do know as to whether or not the Ebner Gold Mining Company's books were just procured from Mr. Behrends something less than a year ago—do you know anything about that?

A. No, I don't.

Q. Then you don't know when he turned over the books of the Ebner Gold Mining Company, Mr. Ebner?

A. No, sir.

Q. Now, Mr. Hellenthal questioned you considerably about some of the mining claims that were located up there in your name, and about certain considerations you may have received by reason of conveying those claims—now, how was the Parish No. 1 and the Parish No. 2 lodes located; were they located in your own name?

A. They were located in my own name.

Q. And did you afterwards convey them to the Ebner Gold Mining Company?

A. Yes, sir.

Q. What consideration, if any, did you receive for that conveyance?

A. Not any.

Q. For whom were those claims located in the first place? [1017—867]

A. They were located in my name, but for the benefit of the Ebner Gold Mining Company.

Q. Now, let us get down to some other claims—Cape Horn No. 1, do you remember whose name that was located in?

A. Yes, that was located in the name of George Duke, Fred Rinshaw and myself.

Q. Now, I will ask you, Mr. Ebner, what, if any,

(Testimony of William M. Ebner.)

consideration there was when that property was turned over to the Ebner Gold Mining Company?

(Not answered because of objection.)

Q. For whom, or what corporation, was that Cape Horn claim taken up, Mr. Ebner?

A. That was taken up for myself; that was taken up some years before I acquired the Ebner Gold Mining Company; I was the owner of the Cape Horn all the time; that was after I had purchased the interest of Mr. Duke, and other interests that came in at different times; and after I acquired title to the Ebner Gold Mining Company, that was reserved especially for the Ebner Gold Mining Company, and when I sold my stock to F. L. Underwood in the Ebner Gold Mining Company I conveyed the Cape Horn and the Eureka lode claims by deed to F. L. Underwood.

Q. Did you receive any special consideration for that conveyance? A. No, sir.

Q. Now, about the Cape Horn No. 2, which Mr. Hellenthal questioned you considerably about; and the conveyance that you made to a man named Martin—now, did you take up the Cape Horn No. 2 under the same circumstances as you did Cape Horn No. 1, or when did you take that up?

A. The Cape Horn No. 2 was originally located as a mill site in 1908; I had sold my stock of the Ebner Gold Mining Company, [1018—868] and deeded the Cape Horn and Eureka, and the Cape Horn and Eureka mill sites to F. L. Underwood. After surveying the Cape Horn lode I found the outside of the



(Testimony of William M. Ebner.)

Cape Horn lode property was a ledge, and I didn't know it was outside of the Cape Horn; therefore, I located the Cape Horn No. 2 as a lode claim, and located it in my own name, all the time expecting to have it conveyed to Mr. Underwood or whoever the proper parties might be who were in possession of the Ebner Gold Mining Company.

Q. Now, then, Mr. Hellenthal questioned you considerably about some consideration that you may have received when you made this conveyance to Martin; I wish you would state to the Court just under what circumstances the conveyance of the Cape Horn No. 2 was made by you to the man by the name of Martin—under what circumstance, for what consideration, and so forth, was that conveyance made, and all about it.

A. When I made the conveyance to Mr. Martin I had understood that Mr. Underwood was out of it, and that Mr. Martin was the true representative of the company controlling the Ebner mine, Alaska-Ebner, or whatever that might be; I don't know just what they called themselves; I had every reason to believe that Martin was the proper man to receive that deed, and I conveyed that for a consideration of \$100.00—that consisted mostly of the surveying—I had that all surveyed in 1908, and Mr. Underwood had never paid me for the surveying, and the location notices, together with other matters, and the survey amounted to about \$100.00, and I charged him that nominal sum in order not to be out anything that I paid on it.

(Testimony of William M. Ebner.)

Judge WINN.—If your Honor please, I would like to ask the witness one question on direct examination.

The COURT.—Very well. [1019—869]

Q. Mr. Ebner, you testified yesterday quite considerably about the developments that have taken place upon the Ebner Gold Mining Company's property since you sold your stock to Mr. Underwood, and also the development work and actual work that you had done prior to that time—I will ask you, Mr. Ebner, in your opinion and judgment as to what size mill, or capacity mill would the developments upon the property as they are now justify the immediate building of?

A. From what I saw, the development underground in these new workings, and what I know of the old workings, both, it would be my judgment that the mine was ready now for a 1000-ton plant—sufficient to warrant a 1000-ton plant.

Q. You mean for the mining and milling of the ore at the rate of 1000 tons per day?      A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—No questions.

(WITNESS EXCUSED.) [1020—870]

The defendant, to further maintain the issues on its part, introduced as a witness DOWNIE D. MUIR, JR., who, being then duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of Downie D. Muir, Jr., for Defendant.**

Direct Examination.

(By Judge WINN.)

Q. What is your name?

A. Downie D. Muir, Jr.

Q. What is your business, Mr. Muir?

A. Mining engineer.

Q. How long have you been following this profession or calling as a mining engineer?

A. About eight years.

Q. Just state briefly, Mr. Muir, what experience you have had in the profession and business which you say you have been following for this length of time.

A. I have had experience in most of the mining States in this country for different periods—for different lengths of time.

Q. When did you first come to Juneau, Mr. Muir?

A. My first trip was made here in 1911, but in connection with the Ebner property in 1913.

Q. Have you had any experience in your profession or business in mines in Alaska?

A. I have.

Q. You came here first in 1911, but at that time you had not gotten established with the Ebner property?

A. No; that was just in passing through going to the Westward.

Q. Going out there on some professional business?

A. Yes, sir. [1021—871]

(Testimony of Downie D. Muir, Jr.)

Q. Now, when did you first have anything to do with the Ebner property, Mr. Muir?

A. 1913—I landed here in Juneau on the 28th of July, 1913.

Q. Did you go upon the Ebner property at that time? A. Well, within a day or two.

Q. I will ask you, Mr. Muir, whether or not at the time that you went upon the property at this last-mentioned date the new air-compressor, the one down at Shady Bend, near the mouth of the tunnel, was installed?

A. The compressor was installed and the compressor house built.

Q. Did you from that time have any connection with the Ebner property? A. I did; yes, sir.

Q. In your connection with the Ebner property, whom did you represent, Mr. Muir?

A. The United States Smelting, Refining and Mining Exploration Company.

Q. And that commenced in the latter part of June, did you say, or the first of June?

A. I was here as their representative from the 28th of July, 1913, up to the present time.

Q. Now, I will ask you since your arrival here at that time if you have been connected with the development and opening up of those mines?

A. I have been in charge of the development at that point since the first of November.

Q. The first of last November? A. Yes, sir.

Q. Do you remember the time they first commenced using this new compressor that is installed

(Testimony of Downie D. Muir, Jr.)

at Shady Bend near the mouth of the new Ebner tunnel? A. On August 21, 1913. [1022—872]

Q. What has that compressor been used for since that time?

A. Furnishing compressed air to carry on development work through the lower tunnel located at Shady Bend.

Q. And that is the tunnel that is marked on Defendant's Exhibit "S" as "New Tunnel"?

A. New Tunnel; yes, sir.

Q. When you got here in July, 1913, at what stage of development, or how far had that tunnel been driven in? A. 1173 feet.

Q. Who did you find up there in charge of the work when you came here?

A. Mr. Mackay was the man in charge of the ground.

Q. Has the driving of that tunnel been continued since the time you came here and took charge of it?

A. Yes; it has been continued with the exception of about a month, I think—from January 18th to February 12th, at which time they didn't have sufficient water to operate, and we had an accident to our pipe-line.

Q. What year was that?

A. That would be 1914.

Q. How many drills, and what size drills, has that new air-compressor been driving for the use of the extension of this tunnel and the work that you have been doing underground on this property?

A. Well, in driving the main cross-cut we used

(Testimony of Downie D. Muir, Jr.)

three drills; after that we encountered the ore, and the number of drills averaged from seven to ten and eleven.

Q. When you were running the cross-cut, you mean when you were running the new tunnel?

A. The work has been done from this new tunnel.

Q. You call that cross-cutting, do you?

A. Cross-cut tunnel from Shady Bend. [1023—873]

Q. Has this work been continuously or otherwise carried on, with the exception of this delay you just mentioned in your answer? A. It has.

Q. To what extent, Mr. Muir, has that new tunnel, as referred to on Defendant's Exhibit "S," been driven in from its face?

A. Well, the present length of the tunnel is approximately 3500 feet.

Q. And what is the size of it?

A. 8x8 in the clear. In addition to that we have driven drifts to the east and to the west from which numerous cross-cuts have been driven.

Q. About, in a rough way, how much driving and cross-cutting have you done in addition to the driving of this new tunnel—just approximately?

A. Well, the total amount of work which we have done since August 21, 1913, is about 4,400 feet; that comprises drifts, cross-cuts and raises—in addition, of course, to the annual assessment work which has been done.

Q. How many shifts of men have you kept at work during that time—during the time that you have



(Testimony of Downie D. Muir, Jr.)

had charge of the driving of the tunnel, and so forth?

A. I think there was but one month, some time in the latter part of 1913, that we had less than three shifts on; during that month we had two, so that the balance of the time we have been operating we have had three shifts continuously at work.

Q. How many men, Mr. Muir, have you had—that is generally speaking, in running this tunnel and work that you have been carrying on on this property, since you have been there?

A. Since striking the ore on April 1st, we have had about 100 [1024—874] men at work, which would be an approximation of 33 men per shift. Just at present I think we have an excess of 100. While we were driving the main cross-cut tunnel our force varied between 40 to 60.

Q. I will ask you whether or not that work is going ahead at the present time? A. Yes, sir.

Q. I will ask you if the development of the ore bodies there justify the continuation of this work.

A. In our opinion they do.

Q. Now, I will ask you, Mr. Muir, if it is your intention to continue this development and finally to operate the mines and mill the ore that is taken from this property?

A. Yes, sir; and not only are we going to continue development as we have in the past, but we are going to increase the development, and we are going to run additional faces.

Q. Now, Mr. Muir, how long do you think it will be, in your judgment, before you will be able to

(Testimony of Downie D. Muir, Jr.)

utilize for the purposes which you have indicated the water of the new Ebner flume to its full capacity?

A. I should say that within a year to 18 months development will be carried on on such a scale that we will use the entire flow of that flume for power purposes.

Q. Now, just state to the Court whether or not the indications as they appear now from the development done, in your opinion, will justify the carrying on of this work? A. They certainly do.

Q. Do you know, approximately, Mr. Muir, how much money your company has expended on this work—I don't mean to a hundred dollars or a cent or anything of that kind, but approximately how much money your company has advanced to carry on this work? [1025—875].

A. Well, our total expenditures on the property to date, or incidental to the property, amount to about \$226,000.00.

Q. You know that there has been other money expended also in carrying on this work since you first saw this property—or was it since you first saw the property? A. That I couldn't say.

Q. You didn't commence making expenditures under your company until about what time, Mr. Muir? A. I am not informed of that.

Q. Was there a part of the time that you did not receive money from the Smelting Company?

A. I presume there were some expenditures before I landed in Juneau on the 28th of July, 1913, of which I know nothing about.

(Testimony of Downie D. Muir, Jr.)

Q. You don't know who furnished that money, whether it was the Smelting Company or someone else?

A. No; I am speaking only as regards the Smelting Company.

Q. Now, I wish you would state to the Court how, if you have at all increased the use of the water through this new flume since you took charge of the work.

A. Well, our power consummation has increased very materially since the tunnel was started; when we started we were only using three drills; now, as I say, we are using from seven to eleven; we have additional fans, a small mill, crushing machinery in the assay laboratory—I should say that our power consummation is at least double what it was when we started.

Q. To what extent, if any, have you increased the use of the water since the trial of this case upon the preliminary hearing?

A. That previous answer will answer that question also, Judge.

Q. Do you know approximately how much water has been used in the [1026—876] flume—that is, as to how much—does it fill the flume, the water that you are using?

A. Its carrying capacity, you mean?

Q. No, I mean as to what fractional part of the carrying capacity of water have you absolutely got use for—that is, the full capacity of the flume or how?

(Testimony of Downie D. Muir, Jr.)

A. No; we are not using the full capacity of the flume.

Q. Do you know approximately how much of the capacity of the flume—what fractional part?

A. I should say between a fourth and a fifth.

Q. Now, I will ask you whether or not, Mr. Muir, if these developments are carried on as you say you expect to, this flume will carry all the water that you will need, or whether you will need additional water?

A. Eventually we would need more water than we could get through that flume.

Q. What, if any, sort of a stamp-mill arrangement, or mill, has been put upon this property since you have had charge of it? A. A 5-stamp mill.

Q. Where is that built, Mr. Muir, with reference to where the mill site is graded off on the Cape Horn No. 2 claim?

A. About three or four hundred feet east of the old mill grade at Shady Bend.

The COURT.—Are you familiar with that exhibit “S”? A. Yes, sir.

The COURT.—Will you locate on exhibit “S” the point where your 5-stamp mill is, and mark it with some appropriate sign? (Witness marks on exhibit “S” the point “5-stamp Mill.”)

Q. Now, what have you marked this point?

A. Designated it as 5-stamp mill.

Q. For what purpose, Mr. Muir, was that mill erected and put in there? [1027—877]

A. For experimental purposes and for the sampling of the ore.

(Testimony of Downie D. Muir, Jr.)

Q. Why haven't you erected a mill for the mining and milling of the ore to be taken from the property?

A. Well, that 5-stamp mill has been in operation about two months, and it is impossible in two months to arrive at any conclusions, mineralogically or otherwise, on the ore we have developed.

Q. In other words, as I understand it, you have not arrived at that stage yet to know what size stamp mill or what kind of machinery, and so forth, you will need in handling the ore bodies on this property? A. We have not.

Q. Now, Mr. Muir, I wish you would, in a brief way, state to the Court what, if any, ore bodies you have discovered in the driving of this new tunnel.

A. The continuation of the ore down to the present tunnel level that was formerly worked by Mr. Ebner, some 500 feet on the dip of the vein above us.

Q. What depth, approximately, is this new tunnel under the old Ebner workings by the mill?

A. 430 feet vertically, or about 500 feet on the dip of the vein.

Q. Have you been through all the old workings of the Ebner mill? A. Which mill?

Q. The old Ebner mill—that is, the underground workings, and so forth, that were there before you took charge of the property?

A. I have been through all the underground workings of the mine, yes; that is, what were accessible.

Q. Now, have you described fully to the Court



(Testimony of Downie D. Muir, Jr.)

what ore bodies have been developed there by reason of the running of this new tunnel and also taking into consideration the old Ebner workings, and what you found in examination of those? [1028—878]

A. The driving east and west from the main cross-cut tunnel at the junction of the ore body extends some 1400 feet at present; our cross cuts have shown varying widths, in most cases similar to the width shown above.

Q. Now, Mr. Muir, I will ask you at the time that the application was made for a temporary restraining order in this case, to state approximately, if you know, the amount of water that you were getting through the new Ebner flume?

A. When was the order asked for—January?

Q. In January; they complained of a shortage commencing in December, 1913, and the preliminary hearing, I think, was had in January, 1914.

A. Well, we shut down from the 18th of January to the 12th of February, partly through an accident to the pipe-line, and partly from the fact that we couldn't get enough water to operate with.

Q. Now, you know the flume of the plaintiff company, the Alaska-Juneau Gold Mining Company's flume? A. Yes.

Q. Do you know what head, approximately, they have at their air-compressor at Snow Slide Gulch, near the portal of their tunnel? A. 427 feet.

Q. Which, the Alaska-Juneau?

A. You asked for the Alaska-Ebner, did you not?

Q. No, I mean the Alaska-Juneau?



(Testimony of Downie D. Muir, Jr.)

A. Ninety foot head—ninety or ninety-five feet.

Q. What head has the Ebner Gold Mining Company there at its penstock down to its air-compressor? A. 427 feet.

Q. I will ask you as to whether or not at the time you closed [1029—879] down for the want of water, that amount of water would have been of any benefit, in your opinion, to the Alaska-Juneau Company for running its air-compressor at Snow Slide Gulch?

(Question not answered because of objection.)

Q. At the time, Mr. Muir, that you say you were shut down for the want of water, do you know approximately how much water was running through the new flume of the Ebner Company?

A. Between 4 and 6 second feet—that would be 160 miner's inches to 4 second feet—for 6 second feet, 240 miner's inches.

The COURT.—This was on the 18th of January, you say?

A. If my memory serves me correctly that was on the 28th or 29th of January.

Q. That was at the extreme low water in Gold Creek in January, 1914, was it, Mr. Muir, as you recollect it?

A. Yes; either one of those two days—a day or two before or a day or two later—somewhere around there, within that week.

Q. I will ask you as to whether or not you know if this amount of water would have been of any benefit to the Alaska-Juneau Company if they had con-

(Testimony of Downie D. Muir, Jr.)

ducted it to their air-compressor at Snow Slide Gulch?

A. It would not have run both sides of their compressor at 100 pounds air pressure.

Q. Well, would there have been enough to run one side, in your judgment?

A. I cannot say as to that.

Q. What would that depend on, Mr. Muir—you say you cannot say, why is it that you cannot say?

A. Well, I could probably figure it out.

Q. Could you figure it out—how much power that amount of water would develop at the head the Alaska-Juneau had down at its air-compressor?  
[1030—880]

A. Four second feet would give them between 40 and 50 horse; 75 per cent efficiency equals 40; 6 second feet would give them around 60 at a head of 90 feet.

Q. 60 what?      A. Horse-power.

Q. You are not sufficiently acquainted with the kind of air-compressor they had down there to tell exactly what they could do with that amount of power, or are you sufficiently acquainted to tell us?

A. The compressor is rated at seven drills; I believe it is a 750-foot machine, and I would say it would take 150 horse-power to run it at speed, 100 pounds air pressure.

Q. Both sides of it?      A. Yes.

Q. The only experience you have had with the Gold Creek water as to the stages of the water during the different times of the year has been since you com-

(Testimony of Downie D. Muir, Jr.)

menced work on the Ebner property, hasn't it, Mr. Muir? A. Yes, sir.

Q. I will ask you, Mr. Muir, what is meant by jacket water in connection with air compressors?

A. Water used for cooling purposes on the cylinders.

Q. I will ask you, Mr. Muir, whether or not there are any springs that run into Gold Creek between the Alaska-Juneau dam and its intake and the Ebner dam and that company's intake?

A. Yes; there are two springs there on the northwest side of Gold Creek—one just above the Ebner cabin, and one below the Ebner cabin; both of which are between the Alaska-Juneau dam and the Ebner dam.

Q. And the water flows into what?

A. Into Gold Creek. [1031—881]

Q. I will ask you if you have ever measured the capacity of those springs, Mr. Muir?

A. Yes; I had them measured last January or February at the low stage.

Q. What did you find was the measurement?

A. The one below the cabin, a flow of 154 gallons a minute, and the one above between 25 and 30.

Q. Gallons per minute?

A. Gallons a minute.

Q. What stage of the water in Gold Creek was this that you made these measurements?

A. Well, through those two or three months there it was the low stage, so they were made at the low stage.

(Testimony of Downie D. Muir, Jr.)

Q. Did you make that measurement between December, 1913, and January, 1914?

A. No; I think the measurements were made some time in January or February, 1914.

Q. It was approximately what stage of water in Gold Creek at the time you made those measurements?     A. Low stage.

Q. Now, Mr. Muir, I will ask you if the time this injunction was applied for, and at the time of the January hearing in this case, whether or not your flume—I mean the Ebner Company's flume—at its dam would take from the bed of the creek all of the flow of the creek?

A. Well, the Ebner dam is built just at the head of a little basin there that is full of gravel, and it is impossible, unless we would dig down through that wash to bed-rock to get all of the flow of Gold Creek into the Ebner flume, into the Ebner intake; I should say there is 25 per cent loss by seepage. [1032—882].

Q. How is it in the dam, is there a seepage of water there?

A. It would depend whether the dam is built on bed-rock, and whether the dam is tight or not.

Q. Now, I will ask you, Mr. Muir, whether or not this amount of water in Gold Creek, by reason of seepage water between the Ebner dam and the Alaska-Juneau dam, and the water that comes into the creek from the springs as you have indicated, would furnish the Alaska-Juneau Company sufficient water for jacket water in running their air-compressor at Snow Slide Gulch?

(Testimony of Downie D. Muir, Jr.)

A. Yes; a great plenty.

Q. I will ask you, Mr. Muir, if you know something of the Alaska-Juneau Company's mill which Mr. Kinzie has testified concerning, and the others, down here near the beach at Juneau?

A. I have been through it.

Q. I will ask you if at the low stage of water that you found in Gold Creek last season, or in January this year,—if that amount of water would have furnished the Alaska-Juneau a sufficient quantity of water to feed its batteries at this mill down at the beach?

A. It would depend on how much water they are going to use per ton milled.

Q. Well, while we are on that subject you heard Mr. Ebner's testimony concerning in his his judgment the amount of ore that has been developed by reason of these works on the Ebner property, and he said in his judgment it would justify the erection of a mill and the handling of one thousand tons of ore per day. Now, I will ask you if you know about how much water it takes per ton of ore in ordinary practice, in mining operations?

A. Well, that varies a great deal, with different conditions [1033—883] and different sections of the country, and whether the water is scarce, but I would say anywhere from 7 to 9 tons of water per ton of ore.

Q. What would you say as to whether that would necessitate the using of the new Ebner flume to its full capacity?



(Testimony of Downie D. Muir, Jr.)

A. Well, I would have to figure that up.

Q. Taking into considerations the workings that would run a mill of this size?

A. Well, if you consider the milling end, the power end, and the battery feed end, and so forth and so on, I would say there wasn't enough water in the flume to do it.

Q. If it was run to its full capacity?

A. Yes, sir.

Q. Well, now, could you give any further answer about whether or not this water at low stage, as you found it in January of this year, would furnish sufficient water to feed the batteries of the Alaska-Juneau mill?

A. If I am not mistaken, in the preliminary hearing Mr. Kinzie testified he was going to use 18 tons of water per ton of ore, and they have got 50 stamps down there, and are going to get 18 tons of ore per stamp for 24 hours—I would say that the low season between 4 and 6 second feet of water would just about do it; if he increases the size of his mill, it would not, if he uses the same amount of water per ton of ore.

Q. I will ask you, Mr. Muir, if you have, during this past summer and since the application for a temporary restraining order in this case, observed the amount of overflow water that the Alaska-Juneau people have said that entered their flume down near their mill here in Juneau—their new mill?

A. Yes; at different times I have been down there



(Testimony of Downie D. Muir, Jr.)

or at a point [1034—884] where I could see it, and have noticed it.

Q. Has there been a continuous overflow?

A. It has been flowing every time I have been down there or happened to look down there.

Q. You have seen it— A. Frequently.

Q. Mr. Kinzie in his testimony testified, as I remember, that that overflow of water was necessary for carrying off their tailings; I will ask you, in your opinion, whether or not that amount of water that has been overflowing there would be necessary to carry off the tailings from that mill, especially with the mill at its present capacity?

A. I should say that the tailings could be carried off on that very steep grade they have there with considerably less water than they have been using—that is, from the overflow end.

Q. I will ask you, Mr. Muir, if you have seen any waste water during this summer going out of the Alaska-Juneau Company's flume between Snow Slide gulch and down where they put in the new air-compressor? A. No.

Q. Have you seen any overflow water up there any place near their flume?

A. Yes; just above what I believe they term tunnel No. 3.

Q. What they term tunnel No. 3 on their flume line? A. Flume and tram lines, yes.

Q. Where is that with reference to where the mouth of the Ebner Company's new tunnel is situated on the opposite side of the creek?

(Testimony of Downie D. Muir, Jr.)

A. It is on the opposite side of the creek, and probably a quarter of a mile below.

Q. To what extent has there been overflow water there, approximately? [1035—885]

A. I never measured it, and I couldn't say.

Q. Well, has there been a small or large stream of it?

A. Well, there has been a pretty fair size stream there; I should say that amount—just as an estimate—one-tenth of what their flume would carry.

Q. Have you measured and ascertained as near as practical the carrying capacity of the new Ebner flume which you have been taking water from to run the new air-compressor? A. Yes.

Q. What is that, Mr. Muir?

A. Between 75 and 80 second feet.

Q. How many miner's inches, approximately, would that be?

A. 80 second-feet would be 3,200 miner's inches.

Q. 32 or 3500 miner's inches?

A. 3200 miner's inches.

Q. Did you ever measure the capacity of the Alaska-Juneau's flume, the one which they testified concerning in this case?

A. I never measured it to measure the size of the flume, but in the flow of water I calculate about 2200 miner's inches.

Q. What did you make that calculation from, Mr. Muir—what part of the flume line?

A. Well, that is the flume line between Gold Creek and the No. 3 tunnel.

(Testimony of Downie D. Muir, Jr.)

Q. I will ask you if you know approximately where the intake of the Alaska Electric Light Company's flume is on Gold Creek? A. I do.

Q. I will ask you what becomes of the water after it is used by you at the new air-compressor, for the purposes for which [1036—886] you have been using it—after you have used it?

A. It is returned to its channel in Gold Creek?

Q. Could you indicated approximately on Defendant's Exhibit "S" where the water goes back in Gold Creek after you have used it, Mr. Muir?

(Witness does so.)

Q. How have you marked it?

A. I marked that "Course of water returned to Gold Creek after being used."

Q. Where is that point on Gold Creek, above or below the Alaska Light Company's intake?

A. About half a mile above.

Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That point, Mr. Muir, however is below the dam of the Alaska-Juneau, and below their intake, isn't it? A. Yes, sir.

Q. And the place the water is discharged from the Alaska-Juneau Gold Creek compressor is approximately the same as the place where the water is discharged from your compressor? A. That is right.

Q. Not exactly the same but about the same,—that is right isn't it? A. That is right.

Q. The head at the Alaska-Juneau compressor is

(Testimony of Downie D. Muir, Jr.)

about the same as the head at the old Ebner mill, isn't it?

A. The head of the old compresor plant of the Ebner is 235 feet, if I am not mistaken.

Q. That is down on the Lotta? [1037—887]

A. Yes, sir.

Q. Just above the Alaska-Juneau dam?

A. Yes, sir.

Q. That is the new building?

A. That is the compressor plant.

Q. Now, I am talking about the old Ebner mill, the original 10 and 15 stamp mill—the head there is about the same as it is at the Alaska-Juneau compressor at Snow Slide gulch, isn't it, within four or five feet the same?

A. I have never measured that head so I don't know, but by looking at it it is probably a little greater than the Alaska-Juneau head, not much.

Q. Now, the flow of water in the winter time is affected by the action of frost upon the running water, isn't it—the frost is what more than anything else determines the flow of water in the creek, Mr. Muir, isn't it?

A. The lower temperature would affect the snow flowing in that causes the stream.

Q. The water running over the bed of the creek freezes up, doesn't it?

A. If it runs far enough; yes, sir.

Q. And the temperature, the farther up you go the colder it gets—that is, where the mill is?

A. Yes, sir.

(Testimony of Downie D. Muir, Jr.)

Q. It is colder up there than it is farther down the creek?

A. I believe the temperature from here to Perseverance varies six or seven degrees.

Q. In other words, where there is a flow of 700 inches at the Red Mill, there would only be 300 at the Ebner?

A. I don't know whether it would be that ratio or not; it would certainly be more down below if it were running, but it would not be more than half. [1038—888]

Q. That is about the ratio, isn't it?

A. There would be an increase.

Q. If there were 400 at the Ebner dam, how much would there be at this point at the Electric Light Company's intake? A. Four hundred what?

Q. Four hundred inches?

A. At the Ebner dam?

Q. Yes?

A. Well, there would be 400 inches at the dam, plus 25 per cent seepage, plus the two streams that flow in above your intake, then it would depend on how much you took out as to how much would be left in the Light Company's flume.

Q. If they didn't take out any from the creek—if the creek was permitted to flow in its natural channel?

A. It would be just the amount I have stated plus any streams that run in, such as are running in the stream now.

Q. In the winter time, I am talking about Mr.



(Testimony of Downie D. Muir, Jr.)

Muir, when the action of the frost upon the water would have to be considered—the action of the frost would not be so great, for instance, from the Ebner dam down as it would be from the Ebner dam up—that is right, isn't it?

A. It would not be as cold below; no.

Q. And the flow of the water would not be diminished in the same proportion?

A. You would have more water flowing below, and probably the decrease would be greater on account of the corresponding increase of water flowing at the lower point.

Q. You think the action of the frost upon the water would decrease the water and would effect a greater decrease in the quantity of water because there is a greater quantity to be affected by the frost? [1039—889] A. I don't understand you.

Q. Now, where the volume of water is greater—a large volume of water is not affected by the frost to the extent that a small volume is?

A. Approximately speaking, no.

Q. Small streams will freeze up quicker than larger streams? A. That is right.

Q. Now, you know the stream is smaller above the Ebner dam than it is below the Ebner dam, don't you? A. Right above the Ebner dam?

Q. Yes.

A. No, sir; I don't; I know that there should be the same amount of water in the creek above as there is below if some is not taken out.

Q. There are some springs flowing into the creek?



(Testimony of Downie D. Muir, Jr.)

A. There are two springs below our cabin.

Q. And other streams, are there not?

A. Not in the winter.

Q. Now, speaking of those springs on the Ebner property that you have referred to—the flow of those springs would not benefit anyone any considerable distance below the springs, would they, Mr. Muir; in the winter time when the freeze is severe, wouldn't that water freeze up as it runs over the ground?

A. If that water had to flow from the point it enters Gold Creek to the tunnel under the same conditions, I would say possibly some of it might freeze before it gets here; but that is not the case, it is constantly getting lower, and from my observation that water flows pretty well right down the creek.

Q. You know, however, that water would never reach the Alaska-Juneau compressor if there were no other water to flow to [1040—890] the compressor but that water—if that was the only water that were available for the Alaska-Juneau compressor in Snow Slide gulch and was conveyed through the flume in the general way, during the winter months, don't you know that that would never reach the Alaska-Juneau compressor?

A. No, sir; I don't know anything of the kind, I know this: The distance from where those springs enter the creek from your dam is somewhat less than 900 feet, and from the time they passed your dam they are in a covered flume; now, if you could get any water through your flume at that season of the year you can get that amount of water through.

(Testimony of Downie D. Muir, Jr.)

Q. Don't you know, Mr. Muir, that when you run water through a flume—a small quantity of water that way, it will freeze right up?

A. I know that anchor ice will form in any quantity of water; but that water keeps going through your flume; your flume was full of ice last winter, but you were getting some water through it.

Q. But the fact remains that the water you get 50 or 100 feet down the flume is very much less than what you get 50 or 100 feet farther up the flume, because it keeps freezing as it passes down, doesn't it?

A. I will admit that such will occur at a certain temperature, but the period of time at which those temperatures occur is the minimum; you might be bothered only two or three days or two or three times during the winter; that is my experience last winter; outside of that you would get that water to your compressor.

Q. You know, Mr. Muir, that last winter was an exceptionally mild winter in this country?

A. I wouldn't say so by comparing the weather records. [1041—891].

Q. That is the first winter you have been in Alaska?      A. Yes, sir.

Q. I believe last winter there were several times when the weather was zero, wasn't there?

A. The government records show here just one night when the weather was below zero here in Juneau.

Q. That is here in Juneau?

A. All right; take 6 degrees lower up above, and

(Testimony of Downie D. Muir, Jr.)

the coldest we had at the Ebner tunnel was 6 degrees below.

Q. This flume runs through a canyon where the north wind hits it—has a sweep at it all the way down, doesn't it, Mr. Muir?

A. I believe from my experience up there it is rather a protected spot; I spent some time on our flume last winter.

Q. Your flume is on the other side of the creek?

A. It is on the other side and gets the wind; your flume is away down in the canyon.

Q. You put a little 5-stamp mill up there, three or four hundred feet up the canyon where this grading is, haven't you, Mr. Muir?

A. Yes; on about the same level.

Q. You never expected to build a mill, Mr. Muir, of any size at the point where this grade is immediately below that slide, did you, Mr. Muir?

A. Before we determine what we are going to do we are going to run the 5-stamp mill, far enough so mineralogically we will know what we have there.

Q. You are first going to find out what kind of a mill you want, and then you will decide on where you are going to build it—is that right?

A. That is presumably the process to be followed.

Q. But you have no intention or no idea of building a mill [1042—892] immediately below that slide, have you?

A. I couldn't say, Mr. Hellenthal, whether we have any intention or not.

Q. You have examined that ground there, haven't

(Testimony of Downie D. Muir, Jr.)

you, Mr. Muir?      A. The slide?

Q. Yes.      A. Yes, sir.

Q. Examined that ground above that grade?

A. Yes.

Q. You know that is no place for a stamp mill or any size, don't you?

A. I am not so sure about that.

Q. However, your little mill is built up farther where it would be in a degree protected, isn't it?

A. Not for that reason at all; because we got additional head room; the lower part of our mill, 5-stamp mill I am speaking of now, is some 10 or 12 feet below the old mill grade to which you referred; we only had 22 feet between the tunnel and the creek, and we had to take up all of the head room we could get.

Q. Of course, if you build a mill on that grade, you would have to hoist your ore from the tunnel into the mill?

A. Not necessarily hoist the ore; we would probably have to have a device to hoist the ore from one machine to another.

Q. You would have to raise the ore from the portal of the tunnel to get it into the mill, wouldn't you?

A. No; the mill could be built so you could get it into the mill without raising it, but after you got it through the stamps it would probably have to be lifted to other machines for subsequent treatment.

[1043—893]

Q. If you build a mill there you expect to deliver the ore from the tunnel to the ore bins, wouldn't you?

(Testimony of Downie D. Muir, Jr.)

A. Well, sir, asking me what I would do, I would say no; I would cut that grade further down if I needed additional head room.

Q. You would change the grade and you would change the place also, would you not, Mr. Muir?

Q. I am not referring to that; I am answering the other question.

Q. I am also asking you now if you wouldn't change the place also?

A. It depends on the size of the mill that we were going to build.

Q. If you were going to build a mill of 100 or 200 stamps, would you build it at that place?

A. For safety that place is all right; the slide you are referring to is 250 feet further down.

Q. Have you ever examined that ground above that mill site? A. Yes, sir.

Q. That ground is ready to fall any time it gets a chance?

A. Ready to fall, no; it is pretty solid ground up there.

Q. Cracked wide open, isn't it?

A. I have never seen any cracks in it.

Q. Never made a very close examination of it have you?

A. Yes; I have been over that ground a good many times up there.

Q. Now, are you making a raise in the tunnel?

A. Yes; we are driving a raise.

Q. Where are you going to connect it?

A. We will connect with the old workings?



(Testimony of Downie D. Muir, Jr.)

Q. At what point?

A. Are you familiar with the old workings?

[1044—894]

Q. Somewhat?

A. Well, we will connect with them pretty well towards the east face of the lower tunnel.

Q. Towards the east face of the lower tunnel?

A. Yes; that is the one there at the Ebner mill.

Q. After you get that raise in you won't need these fans, will you?

A. Certainly will; we will need more than that after we get the raise through.

Q. Won't that raise ventilate your mine?

A. The raise will ventilate the tunnel and the raise itself, but as to the east and west drifts, which are mine drifts beyond the foot of the raise, it will have no effect on them in any way, so that will have to be ventilated by a fan as it is at present.

Q. Now, Mr. Muir, you calculated the size of the Ebner flume at about 3200 inches, didn't you?

A. Yes, sir.

Q. In making that calculation you are taking the flume as it now is?      A. Exactly as it now is.

Q. You know there is one board that has been put up there recently, the top board about eight inches, isn't it?

A. Yes, a little higher than that; that was put up there sometime last fall.

Q. How high is that upper board?

A. Nine inches.



(Testimony of Downie D. Muir, Jr.)

Q. Taking that nine inches off of that flume what will it carry?

A. I cannot tell you until I figure it up.

Q. How high is that flume?

A. Three feet nine inches. [1045—895]

Q. Taking that nine inches off, approximately how much would it decrease the capacity of the flume?

A. It would decrease it, I should say, between 12 and 15 second feet.

Q. Decrease the size between 12 and 15 second feet? A. No; decrease the flow.

The COURT.—What percentage would it be, Mr. Muir; I understand you to say that the capacity of that flume now is 3200 miner's inches?

A. Yes, sir; that is only approximate.

The COURT.—About what percentage would that decrease the flow as measured in miner's inches of capacity? A. About 12 or 15 per cent.

Q. The upper nine inches carries much more water than any nine inches below it, does it not?

A. The center section, right through the middle of the flume, will carry the most water; yes; it would be about 20 per cent.

Q. Would the volume be decreased 20 per cent or the size of the flume itself?

A. No; we are speaking about flow now.

Q. Isn't it a fact that the upper nine inches carries very much more than any nine inches below that?

A. It will carry considerably more than the nine inches on the bottom of the flume; it will carry some

(Testimony of Downie D. Muir, Jr.)

more than the next nine inches; and it will carry very little more than the next nine.

Q. It will decrease the carrying capacity of the flume about one-third, will it not?

A. I cannot answer that question until I figure it carefully.

Q. Did you commence operations in driving the tunnel when you came here in August—the 21st of August? [1046—896]

A. I have got it pretty close—it won't decrease the flow of the flume one-third.

Q. How much will it decrease the flow of the flume, Mr. Muir?

A. Between 27 and 28 per cent; that is an approximate figure.

Q. Were the operations on the tunnel commenced just after the first of August, 1913?

A. Yes; the first work was done in the tunnel on the 21st day of August.

Q. 1913? A. 1913.

Q. That is when operations on the tunnel were commenced?

A. The operations on the face of the tunnel were commenced; the tunnel at that time was in 1173 feet.

Q. That is when operations on the tunnel were resumed? A. Yes.

Q. Up to that time the operations had been suspended for some time owing to various causes, hadn't they? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Testimony of Downie D. Muir, Jr.)

Redirect Examination.

(By Judge WINN.)

Q. Were you there when this last board was put on the height of the flume? A. Yes, sir.

Q. When was that, approximately?

A. I should say that was in the latter part of October, or the 1st of November, 1913.

Q. How is the original framework of the flume with reference to the putting on of this board—was the framework of the [1047—897] flume built for the purpose of putting this board on—the entire framework?

A. Yes; the framework of the flume was originally constructed for a 4-foot flume; for some reason which I don't know they only put three 12-inch boards on the sides.

Q. Then those upright pieces that the boards were nailed on right along the side of the flume extended up high enough to put this extra board on?

A. Yes, sir.

Q. And the flume was in that condition when you put the board on? A. Yes, sir.

Q. Now, I will ask you to look at Defendant's Exhibit "Z" in this case, and state if that part of the flume line which is exhibited on this photograph generally would show about the construction of the flume before you put that extra board on?

A. That is pretty hard to say, Judge; but I presume that is about the shape it was in.

Q. Well, do those upright pieces on which the boards are nailed—are they similar to the ones

(Testimony of Downie D. Muir, Jr.)

shown in this photograph?

A. Oh, yes; they show about a foot above the outside board.

Q. So you only put about nine inches on that board that was originally intended for those boards to be put on?      A. Yes, sir.

Judge WINN.—That's all.

Mr. HELLENTHAL.—That's all.

(Questions by the COURT.)

Q. Mr. Muir, before you put that board on, was there enough water in the flume in the summer-time to answer all your purposes—all your present purposes—were you getting enough water in the summer-time, taking the usual flow of Gold Creek in the summer-time, to drive your tunnel? [1048—898]

A. We had; yes, sir.

Q. Were you getting enough water in the winter-time up to the time that the water ceased entirely—that is, in January, did you get enough water?

A. Not exactly, Judge, because before the shut-down I had to take one side off.

Q. What did you put the extra plank on the flume for—it didn't increase your capacity and you had all the water you wanted when you could get any water at all, and when the water was low the addition of the plank—the extra height—didn't increase your flow, did it?

A. I was endeavoring to fix the flume in such shape that I would have as little trouble as possible with freezing water during the winter, so I put a top on and put the side board on, and made the flume

(Testimony of Downie D. Muir, Jr.)

as high as possible, as well as taking the flume to its originally intended cross section, in expectation of our intended requirements.

Q. Do I understand before you put that 9-inch plank there on the top, that your flume was not covered over?

A. No; there was no covering on the flume at all; it was an open flume 4 feet wide and 3 feet high.

Q. Is the flume now covered the entire distance?

A. Yes, sir.

The COURT.—That is all.

(Questions by Judge WINN.)

Q. Just a moment, Mr. Muir—as I understand, then, this work that was done as you have testified to in answer to Judge Jennings's questions, was a matter of building the flume as it was originally intended to be built?

(Not answered because of objections.)

Q. What was that done for, Mr. Muir—that extra work that you put on there covering the flume?  
[1049—899]

A. Why, it was put on in expectation of carrying the full quantity of water that the flume was originally intended for, and what the flume was originally intended for was easily shown by the construction of the upright posts, which went a foot above the side board and showed clearly that whoever designed it designed it for a 4x4 flume, but when I came here it was a 3x4 flume.

Q. No covering on it?

A. No covering on it; the covering, as I say, was

(Testimony of Downie D. Muir, Jr.)

put on in the cold weather.

Q. I will ask you if, in the construction of flumes in this country or any other place, it is a part of the construction of the flume to cover it?

A. Depends entirely on the country; in this country where you have lots of snow and cold weather, and this flume being located on the side of the hill where there is liable to be snow slides come down, it is necessary to cover it; in southern countries—

Q. Is the Alaska-Juneau flume just on the opposite side of the creek covered?

A. The flume from the intake to the tunnel—Gold Creek tunnel, has either one or two boards on top of it; I should say that 75 per cent of the top area of the flume is covered.

Judge WINN.—That is all.

(Questions by Mr. HELLENTHAL.)

Q. You covered it because you wanted to protect yourself against anchor ice?

A. Anchor ice and snow.

Q. You have anchor ice in that flume during a part of the winter season?

A. Yes, sir. [1050—900]

Q. And it retards the flow of your flume?

A. Yes; when the anchor ice gets so high it goes over the 9-inch board, the water is away over the flume.

Q. You didn't build your flume clear to the top of the uprights that you found there, did you?



(Testimony of Downie D. Muir, Jr.)

A. No, sir; for the reason that I wanted to put a top on and I wanted to do it as economically as possible.

Q. And the work you did in driving that little tunnel on your property, the actual work of some four thousand feet cost you over \$200,000.00—is that right? A. I made no such statement.

Q. How much work did you do, Mr. Muir?

A. About 4,400 feet.

Q. How much did that cost you?

A. That is the first time you have asked me that question?

Q. Judge Winn asked you something about that?

A. Judge Winn asked me how much had been spent on the property, or expended on the property, and I answered \$226,000.00.

Q. How much work did you do besides running the 4,400 feet?

A. I am going to tell you what money was spent on the property if you will wait a minute.

(Whereupon Court adjourned until 10 o'clock tomorrow morning.) [1051—901]

MORNING SESSION,

August 5, 1914, 10 A. M.

D. D. MUIR, Jr., the witness-stand.

Judge WINN.—Mr. Hellenthal had a question pending to the witness.

Mr. HELLENTHAL.—Oh, I don't care about it.

Direct Examination.

(By Judge WINN.)

Q. The question, Mr. Muir, that Mr. Hellenthal

(Testimony of Downie D. Muir, Jr.)

had propounded to you and you hadn't answered it, I will ask you to answer it; you were stating, I believe, how much money had passed through your hands or had been disbursed by the Company you represent in the opening up and development of the Ebner property; if you have those figures I wish you would briefly state what they were, and make such application of that amount as you may be able to the items and things for which it was paid.

A. Since operations started on August 21st, 1913, approximately \$131,000.00 has been expended in labor and equipment and supplies on the tunnel to date.

Q. What was the remaining part of the \$226,000.00 for?

A. That I am not informed of; the property was sold at a mortgage sale, and the receivers dismissed, and I would presume a portion of it went in to settle up the indebtedness against the property.

Q. What connection did you say your company had with this United States Mining, Smelting, Refining & Exploration Company?

A. United States Mining, Smelting, Refining & Exploration Company; we hold an option on the Ebner property from the Chapman Committee of New York or Boston, which purchased the property at the foreclosure sale this spring.

Q. They foreclosed on the stock of the Ebner Company and not on [1052—902] the physical property?

A. Well, I cannot say as to that; I don't know.

(Testimony of Downie D. Muir, Jr.)

Q. Now, you stated something to me since you left the witness-stand about you hadn't figured as accurately on the witness-stand as you might have done as to how much the taking off of that 9-inch board at the top of the flume would decrease the capacity of the flume—have you made a better computation of that since you left the witness-stand?

A. Yes; my answer yesterday was only an estimate in reply to Mr. Hellenthal's question, and in figuring out the decrease of percentage in the carrying capacity of the flume if the 9-inch board were taken off the top, would amount to between 20 and 22 per cent.

Q. Have you calculated approximately the carrying capacity of the present Alaska Light and Power Company's flume?

A. No; I have made no calculations of that; the size of that flume, the Alaska Light flume, is 4x4, and the grade, I believe, is 47/100; that is considerably in excess of the grade of the Ebner flume, consequently the carrying capacity of the Alaska Light flume would be considerably greater than the capacity of the Ebner flume; I should say considerably over 4,000 miner's inches.

Q. Now, I will ask you, Mr. Muir, should the Alaska-Juneau Company take from their dam all the water of Gold Creek at any season of the year and convey it to the mill down at the beach, whether or not there would be any water at the intake of the Alaska Light Company's flume?

A. Why, at the lowest stage of water during the

(Testimony of Downie D. Muir, Jr.)

year, if the Ebner take no water at all out of the intake, and all of the water was taken out by the Alaska-Juneau Company at their intake and taken in their flume and carried to the mill site down here, there would be no water at the intake of the light Company's [1053—903] flume other than a small portion that might in the warm portions of the day run out of the gulches below the Alaska-Juneau intake and above the Alaska Light intake.

Q. You marked on Defendant's Exhibit "S" yesterday, I believe, where the Ebner Gold Mining Company returns the water to Gold Creek after it is used at the 5-stamp mill and at the new air-compressor, and that place you marked is on the Cape Horn No. 2 lode claim, is it? A. Yes, sir.

Q. And that is returned at a point above the Alaska Electric Light Company's intake?

A. Yes, sir.

Judge WINN.—Now, I desire to ask Mr. Muir a question in the way of a direct question that I overlooked when Mr. Muir was on the witness-stand.

The COURT,—You ask him this question as a recall,

Judge WINN.—Yes.

Q. I will ask you if you have been on the Ebner property a good deal since you came here and took charge of the work up there?

A. I have; yes, sir.

Q. I will ask you as to whether or not you have ever taken notice of any brushed-out or any visible line on the lower side line of the Lotta claim?

(Testimony of Downie D. Muir, Jr.)

A. Yes; that line is visible to-day from the Perseverance road, and from a point further down the road the end line of the Lotta, and Taku is also visible.

Q. I will ask you can that be easily or otherwise seen by anyone going along the road?

A. If a person were to stop and look across the gulch they could undoubtedly see that there *that* been some brush cut out there, and looks as though there were a straight trail going across, [1054—904] that would be the southwesterly side line of the Lotta.

Q. Over what length of time have you observed this cut-out portion that you have just testified concerning, Mr. Muir? A. For about a year's time.

Judge WINN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Muir, how many times have you brushed out the lower side line of the Lotta since you were here?

A. It has not been brushed out since I was here.

Q. Do you mean to tell this Court, Mr. Muir, that you have been here almost a year and during that time you have not had that line brushed out at least once?

A. No, sir; that line has not been brushed out since I have been here.

Q. Now, just a question about that Alaska Electric Light business; the Alaska-Juneau people use the water at the Snow Slide gulch compressor and



(Testimony of Downie D. Muir, Jr.)

they put it back into the creek before it gets to the Alaska Light and Power Company's intake, don't they?

A. The water that is used on the compressor will go back into the creek above the Alaska Light intake; yes.

Q. The Alaska Light Company has about the same elevation that your Company has?

A. Approximately.

Q. And will go back into the creek at the same place? A. A little above.

Q. Then the Alaska Light and Power Company would not be inconvenienced, would it?

A. Not through that amount of water, but that amount of water [1055—905] is a very small quantity compared with what your flume will carry.

Q. You figure on putting a 200-stamp mill somewhere in the vicinity of Shady Bend, Mr. Muir, I understand?

A. I haven't so testified; no, sir.

Q. You don't figure on putting such a stamp mill up there?

A. In answer to that question, Mr. Hellenthal, I will say that we have not gone far enough with our experimental mill to determine what process we have got to install, and until such time as that is thoroughly determined we won't figure on a mill. I suppose after that is determined they will know what they are going to do.

Q. You don't know anything about erecting a mill at the present time?



(Testimony of Downie D. Muir, Jr.)

A. I haven't considered it; no, sir.

Q. You have no plans of erecting a milling plant at Shady Bend, then, at the present time—is that right?

A. No. As I say, we haven't gone far enough to determine on a plant at any point.

Q. If you were to put a milling plant at Shady Bend you would have to put the tailings in the creek, wouldn't you?

A. We would, probably, in that case flume the tailings.

Q. Flume the tailings? A. Yes, sir.

Q. Where to?

A. Probably put them in the channel down here like you people are doing.

Q. You would flume your tailings all the way from that mill site clear to the channel?

A. That distance would be less than a mile and a quarter.

Q. You know that is not practical, don't you, Mr. Muir.

A. I know it is practical—immensely practical.  
[1056—906]

Q. You would have to have at least 4 tons of water to one ton of tailings, wouldn't you, Mr. Muir?

A. We have got a fall up there from the mill site to the beach here of about 345 feet, and if we, as I understand you people are figuring on doing, use 18 tons of water per ton of ore milled, we will have sufficient water to carry our tailings down.

(Testimony of Downie D. Muir, Jr.)

Q. However, in order to do that you would carry the water and the tailings up above the Electric Light and Power Company's intake, wouldn't you?

A. We would put in a flume that would carry them past the Electric Light Company's flume.

Q. The Electric Light and Power Company, however, in order to use that water would have to have it pumped back to their intake, wouldn't they?

A. Oh, no; not at all; it is above the ridge there.

Q. If you carry the tailings to the beach, you would dump the water in the channel, wouldn't you?

A. We could flume the tailings, Mr. Hellenthal, over the basin there to prevent the silt settling there and stopping the water supply.

Q. But the answer you made was that you intend to flume the tailings to the beach.

A. Isn't that fluming them to the beach, if we dump the tailings at the intake of the Alaska Light Company's flume?

Q. You don't intend to flume them to the beach but to the intake of the Alaska Light Company's flume, is that right?

A. I am stating to you assumptions pure and simple.

Q. If you took the tailings beyond the intake of the Alaska Light and Power Company you would have to carry the water beyond the intake, wouldn't you? A. Yes. [1057—907]

Q. And if you dump the tailings above the intake of the Light Company the tailings would pollute the

(Testimony of Downie D. Muir, Jr.)

water of the Alaska Light and Power Company, would they not?

A. Well, the proportion of water in the creek—the proportion of water that would go with our tailings, the tailings would be in small proportion; it would be pretty nearly pulp before they got that far.

Q. They would, however, destroy the use of the water for the Light Company for their plant, wouldn't they?

A. No; the tailings that would go from our mill would be nearly pulp. I will admit it might give them some worry.

Q. It would injure the plant—not exactly destroy it, but injure it?

A. The injury would be to the ——— alone.

Q. In the winter time what would be the proportion of water and tailings in the creek below the Alaska Light and Power Company's intake?

A. We would probably be in the same shape you are yourself—we would be shut down.

Q. If you were using the water, what would be the proportion?

A. Well, at the low stage of water we would be using all the water we could get, which would be all the water in Gold Creek.

Q. There would be more tailings than there would be water?     A. Yes.

Q. Now, if those tailings went down there and were dumped above the Alaska Light and Power Company's flume, you know they could not use this water, don't you?

(Testimony of Downie D. Muir, Jr.)

A. It would be a case of putting in settling boxes—settling tanks; there would be nothing only a very fine pulp.

Q. On whose ground would the sand settle?

A. I don't know who owns that ground. [1058—908]

Q. You said about \$150,000, or a little less than \$150,000, I think, was spent on the driving of the tunnel and other like work in the Ebner mine?

A. I said \$141,000, Mr. Hellenthal; that was on labor, supplies and equipment.

Q. In connection with the development of the mine?

A. In connection with the development of the mine.

Q. Such as driving tunnels and drifts, making up-raises and work of that character?

A. Buying supplies and equipment—for that purpose, yes.

Q. And the other was spent in straightening out titles, and things of that character?

A. I said I didn't know, Mr. Hellenthal. That amount I testified to was what has been spent since I have been on the property.

Q. That wasn't spent, then, in any part of the development of any of the Ebner property?

A. Not so far as I know.

Mr. HELLENTHAL.—That's all.

The COURT.—Mr. Muir, I don't know whether I asked you the question or not. I wish to be informed how much water, measured in miner's inches,

(Testimony of Downie D. Muir, Jr.)

taken at the Ebner dam where you take it now—how much water is necessary to drive the tunnel that you are now driving, and operate the sampling mill that you now have on the ground.

A. In answering that question I will have to give a little explanation, if I may, Judge. For instance, when we started in here we were running but three drills and the fan. Now, as against that, we are running from 7 to 11 drills, 2 fans, one water wheel on the mill, a water wheel on the generator, and a water wheel on the air-compressor, so where our power consumption was probable 250 horse at the start, it is now [1059—909] between 450 and 500 horse actual consumption. Now, in miner's inches, if I can answer that question a few minutes later—it will take some figuring to figure it out.

The COURT.—What I want to know is how much are you using now, and I want to know whether or not the consumption of water for power requirements for the work that you are doing is on the increase or the decrease?

A. Well, it is on the increase.

The COURT.—Well, if it is on the increase, then I want to know to what maximum it is probable it will reach. In other words, Mr. Muir, I want to get in my mind an idea of how much water power you require outside of the fact of your ultimate requirements when you get a 200-stamp mill or whatever stamp mill you might erect for the Ebner operations and your work; I want to know how much water power you are using and how much water power you

(Testimony of Downie D. Muir, Jr.)

will need to develop this property until you have arrived at a conclusion where to put your mill?

A. I can give you those figures in a very few minutes.

The COURT.—Very well.

(WITNESS EXCUSED.) [1060—910]

The defendant to further maintain the issues on its part, recalled as a witness, F. J. WETTRICK, who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as follows:

**Testimony of F. J. Wettrick, for Defendant  
(Recalled).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Wettrick, Judge Jennings, I think, asked you a question the other day and I don't think you answered it, and I will ask you since you left the witness-stand, have you made a sufficient examination to ascertain whether or not the Lotta lode claim as it is located on Defendant's Exhibit "S" is the location of it as described in Judge Cushman's decision—now, any explanation you have to give on that, explain fully to the Court?

A. I made an examination of that, and as the result of that examination I prepared a plat which follows the description given in the judgment or decree of Judge Cushman.

Q. Now, I will first, Mr. Wettrick, read you the description of that claim as we sued for it and as



(Testimony of F. J. Wettrick.)

described in our complaint in the case in which Judge Cushman rendered his decision.

(Objection and the description not read.)

The COURT.—What I want to know of Mr. Wettrick is whether or not the Lotta lode claim as it appears on exhibit “S” was platted from the field notes or from Judge Cushman’s decision, and if it was not platted from that, then please plat it from that on tracing paper so that it can be superimposed on Defendant’s Exhibit “S”—that is what I want, I don’t care [1061—911] what you claim.

Q. Now, Mr. Wettrick, you understand the Court’s position so you explain those matters to the Court?

A. The map which I presented here of the Lotta, as I stated before, was platted according to the description of the judgment and decree of Judge Cushman, the lower side line of the Lotta being the line marking corners 5 and 6 as per that description in exactly the same position as it has been on every exhibit in all the Basin cases we have introduced; the position of No. 5 which is the most southerly corner of the claim and nearest the cabin, is tied to the cabin in the description given in the judgment and decree of Judge Cushman, and it therefore fixes absolutely the description of corner No. 5 of the Lotta; corner No. 5 of the Lotta is exactly in the same position now as it was in in 1908; the course of the lower side line of the Lotta, instead of adopting the course given in the patent notes, the course is as it is delineated upon this map, namely N. 31° 36’ W.

Q. Well, what will that do with reference to any

(Testimony of F. J. Wettrick.)

of the other posts—for instance, corner No. 6, and the post that is on the side line of the Lotta lode claim as shown on Defendant's Exhibit "S"?

A. And following that course from corner No. 5 it leads you to the position of the actual corner No. 6 of the Lotta, and passing from the witness corner, which has been referred to in my testimony heretofore—that is to say, the lower side line of the Lotta according to its actual position on the ground, which this exhibit "S" delineates, is exactly the same as the description gives it in the judgment and decree rendered by Judge Cushman; the [1062—912] difference in the course is this—instead of adopting the course of N. 33—35, with a 30 degree variation as given in the patent notes, we adopted the course as we found it by actual observation, N. 31—36 W. and with a 32 degree variation; the difference in the variation being about the same as the difference in the location.

Q. If you take the course that is given in the patent and the variation in the patent, what effect, if any, would that have upon the claim as it is located on Defendant's Exhibit "S"?

A. That would put it in almost the identical position as the course of 31—36 would, with 32 degree variation.

Q. Now, I understand that in Judge Cushman's decision he followed what course and what variation?

A. The course and variation as determined by his decree and checked by the Alaska-Juneau engineers as being the present true course, N. 31—36 W.

(Testimony of F. J. Wettrick.)

Q. But if you take the other course and distances with the variation that is given in the field-notes you say it would practically put it in the same place?

A. It would.

Q. Now, I will ask you, Mr. Wettrick, if you testified in that Basin case before Judge Cushman?

A. I did.

Q. I will ask you if the corner posts that you have testified to in this case on the lines of the Lotta are the same corner posts and in the same places that you testified concerning before Judge Cushman?

A. The corner post 5—

(Question objected to and reframed.) [1063—913]

Q. I will ask you at the time of the trial of the case before Judge Cushman where were those corner posts with reference to where they are now and where they were just prior to August 1st, 1910?

A. The same place.

The COURT.—What I was trying to get done was this: Judge Cushman's decision says that the Ebner Gold Mining Company, or the plaintiff in that suit is entitled to, and is the owner of a certain lode mining claim called the Lotta, which said lode mining claim is particularly described as staked upon the ground, and more particularly described as follows, to wit: "Beginning at corner No. 1 of the Lotta lode claim"—Now, do you know where corner No. 1 of the Lotta lode claim patented is? A. Yes, sir.

The COURT.—Have you got that on this tracing that you have now in your hands? A. Yes, sir.

(Testimony of F. J. Wettrick.)

The COURT.—State whether that is in the same place that you have represented it to be on Defendant's Exhibit "S"?

A. It is not exactly in the same place as it is represented on this exhibit—that is to say, the distance from 6 to 1 on this exhibit is a few feet shorter than that given in that description.

The COURT.—Can you, on exhibit "S," locate where the corner No. 1 of the Lotta patented is?

A. Yes, sir.

The COURT.—Well, I wish you would do that, and then superimpose your tracing over that. Now, locate on your tracing where corner No. 1 of the Lotta lode claim patented would be, and mark it on Defendant's Exhibit "S" as "A-1." [1064—914]

(Witness does so.)

The COURT.—Now, superimpose the tracing that you have placed the corner No. 1 of the Lotta lode claim patented, as you have traced it on your tracing—superimpose that on the point that you have just marked on Defendant's Exhibit "S," "A-1,"—now, doing that, does the rest of the Lotta lode claim fit over the Lotta lode claim as you have marked it on Defendant's Exhibit "S"?

A. Not all of it, no.

The COURT.—Superimpose your tracing which you hold in your hand on Defendant's Exhibit "S,"—how does the lower side line of the Lotta lode claim, as described in the decree of Judge Cushman compare with the lower side line of the Lotta lode claim platted on Defendant's Exhibit "S"?

(Testimony of F. J. Wettrick.)

A. It is exactly the same position except that on the exhibit "S" it is 26 feet longer than in the decree of Judge Cushman; otherwise it is exactly the same.

The COURT.—Now, on exhibit "S" you have traced there the location of the dam of the plaintiff company? A. Yes, sir.

The COURT.—That dam as you have located it on exhibit "S" is all below the Lotta lode claim, is it not?

A. It is not all below; at the end of the timbers, there is a projection of the timbers over the line a very short distance about three feet in length, one and a half to two feet in width.

Q. Where is the intake.

A. The intake is below the line as indicated just below the letter "D".

Q. Between corners 5 and 6 of the Lotta lode claim there is a place marked "Alaska-Juneau Dam," and you have a black heavy [1065—915] shaded space entirely below the line of the Lotta lode claim; does that or does that not correctly represent the Alaska-Juneau dam?

A. That represents the dam correctly; the width of the line—the scale being 200 feet, the width of the line is probably just a little wider than the scale. It would be difficult to show the projections, only being a foot or two, crossing the Lotta there because the width of the line—the scale is so small that it does not admit of showing the one and a half foot or so that projects on the Lotta.



(Testimony of F. J. Wettrick.)

Q. I understand you to say that the intake of the dam is below the Lotta lode claim? A. It is.

Q. And one or two of the timbers of the dam project on to the Lotta lode claim?

A. About two and a half or three feet of the timbers project, making a width of about one and one-quarter or one and one-half feet; the timbers running diagonally over the creek, and it is those timbers that run over the line of the Lotta.

Q. And all the rest of the timbers of the dam are below the Lotta?

The COURT.—The dam is itself?

A. Well, the riprap and the silt may project over the line of the Lotta; because of the grade with that kind of material, and the dam being so close to the line may project over.

Q. That is the case in all dams, isn't it?

A. Yes, sir.

The COURT.—Silt is bound to accumulate; if the dam was 20 feet below the line there would be some silt accumulated?

A. Yes, sir; as I say I am speaking of the timbers I actually saw; I didn't dig down to see if there were any other timbers at all.

The COURT.—That is what I want to know,—if the position of that [1066—916] lode claim as Judge Cushman decided it and as shown on exhibit "S"—about how it compares?

A. The lower side line is exactly the same.

The COURT.—Just mark that tracing "Tracing



(Testimony of F. J. Wettrick.)

of Lotta Lode Claim according to Judge Cushman's decision."

(Witness does so.)

The COURT.—No, have you put a scale on there?

A. The scale is on; yes, sir.

The COURT.—And the directions?

A. Yes, sir.

(Whereupon said tracing was received in evidence and marked Defendant's Exhibit "E-1").

Q. (By Judge WINN.) The Alaska-Juneau dam, is it or is it not on Defendant's Exhibit "S" in the same position as it was before Judge Cushman rendered his decision?

A. No; not quite.

Q. Well, you testified on that question in this case, didn't you, heretofore—Mr. Hellenthal cross-examined you and I redirected you?

A. I think so; yes.

Q. Do you remember what the difference is in the position of the dam as it was before he rendered his decision and the position of it now?

A. No; not the actual number of feet.

Q. You did give it in evidence in this case, didn't you?

A. I don't remember if I did; if I did I must have looked up my note-book.

Q. I will ask you to look up your note-book and get that and give me the exact position that dam was in, and I will recall you on that?

A. The actual position of it is found in one of the exhibits [1067—917] introduced in this case.

(Testimony of F. J. Wettrick.)

Q. I will ask you, Mr. Wettrick, what this is a photograph of, and I refer to exhibit "F-1" for identification?

A. A photograph showing the Ebner dam, intake of the new Ebner flume, and a portion of that new high-line flume, and the wagon-road leading from Juneau to Perserverance mine.

Q. Which has been referred to frequently here as the Basin road?     A. As the Basin road.

Q. Now, does it show anything up on the dam?

A. It shows a post right alongside of the intake upon which a notice of location was posted.

Q. Did you see the location notice that was posted on that post?     A. Yes; I believe I did.

Q. Is that the one that was posted by Mr. Tripp or the one that was posted by myself as agent for the Ebner Gold Mining Company?

A. It was the latter; the Tripp notice was over on the other side of the creek.

Judge WINN.—I will offer this exhibit in evidence, may it please the Court, and I will question him a little more about it.

The COURT.—Was the time fixed? You submitted the photograph to him and asked him what it was a photograph of, and you asked him about a notice; you asked him whether that was the notice you posted or the notice that Mr. Tripp posted, and I want to know what time he is testifying to about the notice.

Judge WINN.—I expected to take him over that after I got the photograph in evidence.

(Testimony of F. J. Wettrick.)

Mr. HELLENTHAL.—No objections to the exhibit.

(Whereupon said photograph was received in evidence and marked [1068—918] Defendant's Exhibit "F-1.")

Q. Do you remember about what time it was that you saw that notice there, Mr. Wettrick, on this post near the present intake of the new Ebner flume?

A. No, I don't; I was up there but I don't know exactly what time I saw it there, or what particular time I did see it.

Q. Was it before October 3d, 1910?

A. I should say it was; my impression is it was, because I was up there frequently before that time, up around that part of the work.

Q. Now, Mr. Wettrick, I wish you would take this photograph, and as you have already spoken about the Basin road I will ask you from what portion of the Basin road as indicated on this photograph can the Ebner dam and this notice you are speaking of be seen?

A. That notice can be seen from almost any point along the road from beginning at a point a little above the road leading off to the Ebner mill up to the dam, a distance of about 900 or 1000 feet or more.

Q. The intake shown on there, did you state that that was the intake of the old Ebner flume or the new Ebner flume that was built by Mr. Mackay?

A. I said that was the intake of the new Ebner flume.

Q. Did you see the Tripp notice while it was posted

(Testimony of F. J. Wettrick.)

up? A. I didn't see the paper, no.

Q. What did you see?

A. I saw the post that was pointed out to me that the notice was posted on.

Q. Is that visible in this photograph?

A. That same post, I think, is shown on this photograph. [1069—919]

Q. On what portion of the photograph?

A. On the extreme left hand of it.

Judge WINN.—That is all, your Honor, except to recall him on the matter I indicated a while ago.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Wettrick, the part of the dam that projected over the Lotta line at the time this case was tried before Judge Cushman was the upper end opposite the intake, was it not?

A. The upper end opposite the intake.

Q. That is the end on the opposite side of the creek from where the intake is? A. Yes, sir.

Q. The end on the side of the creek where the intake is did not project over the line?

A. I don't believe it did, no; I don't remember whether it did or not.

Q. Well, the intake of the Alaska-Juneau people, that is just the same now as it was before that decision—that has never been changed, has it?

A. I don't believe it has; it looks the same to me.

Q. That was always below the lower side line of the Lotta? A. The intake was; yes.

Q. And the only thing that was over the line was a

(Testimony of F. J. Wettrick.)

piece of the dam? A. The timbers of the dam.

Q. That has been changed since that decision was rendered, hasn't it? A. It has.

Q. It hasn't changed the position of the dam in the creek any, [1070—920] has it?

A. It seems to have, yes, by swinging the timbers around from upstream downstream, it turned the other end of the timbers up to the extent that I have indicated.

Q. What extent?

A. To the extent of about a foot and a half above the line in lateral distance, and about three feet along the length of the timbers.

Q. That is the same place—on the same side of the creek where that extends over the line?

A. That is somewhat near the middle, not quite, a little east of the middle of the creek.

Q. A little east of the middle of the creek?

A. Yes; the intake being at the extreme easterly side of the creek, the dam of course does not come across the intake because that would close it up.

Q. That is about a foot over the line of the Lotta at its widest place, you think now?

A. In that neighborhood.

Q. Did you measure that by actual survey or are you just estimating, Mr. Wettrick, from an observation.

A. No, sir; I ran the line down there, an actual survey.

Q. When did you run those lines?

A. A week ago last Sunday.

(Testimony of F. J. Wettrick.)

Q. Who was with you?

A. Mr. Wilhelm and Mr. Malotte.

Q. How long did it take you to run it?

A. Oh, I don't know; I don't know whether it was Sunday or not, it was in the morning, I don't believe it was Sunday; it took us about two hours, I think.

Q. Did you go down the creek and actually measure the distance? [1071—921]

A. I went down the creek and found where the line hit, and then from there I estimated the distance.

Q. You didn't measure it?

A. You mean the distance the timbers projected over?

Q. Yes.

A. That distance I didn't measure; I saw where the line fell upon the timbers, and being within a few feet of it I could very easily estimate it.

Q. You took what you thought was an observation over the line and then estimated the distance you thought this timber projected over the line?

A. No; not the distance I thought, but the distance I saw.

Q. That is all the surveying you did to determine that line?

A. I relocated the side line of the Lotta by actual transit work and saw where the lines projected there hit the dam.

Q. Did you follow the line from one post to the other? A. Yes, sir.

Q. Actually over the ground?

A. Yes, sir; I did.



(Testimony of F. J. Wettrick.)

Q. Went down in the bottom of the creek to determine the exact location of the line in the bottom of the creek?

A. I went down to the bottom of the creek.

Q. How did you do that?

A. Slid down there, with some difficulty.

Q. That is the reason you surveyed that line, isn't it? A. Not to run down into the creek.

Q. It is an exceedingly difficult place to get up and down, isn't it?

A. It is pretty difficult right there.

Q. You didn't wade the creek, did you, Mr. Wettrick?

A. Oh, I waded it to some extent, didn't wade across.

(WITNESS EXCUSED.) [1072—922]

ANGUS MACKAY, upon being recalled as a witness on behalf of the defendant, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Testimony of Angus Mackay, for Defendant  
(Recalled).**

Direct Examination.

(By Judge WINN.)

Q. Mr. Mackay, you heard some testimony here,—I don't know but what your attention was directed to it before, but to be sure of it I will ask you a few questions so as to have it in the record. You heard the testimony of Mr. Muir concerning putting on another board, of the width of 9 inches, on the new Ebner flume, did you? A. I did.

(Testimony of Angus Mackay.)

Q. You are the party that had control and supervision over the construction of that flume in the first place?     A. Yes, sir.

Q. Do you know approximately when this 9-inch board was put on that Mr. Muir testified concerning?

A. It was in the fall of 1913.

Q. I will ask you if the upright pieces and the frame of the flume were originally framed for the purpose of putting on another board?

A. Yes, I left it with the intention of making it a 4x4 flume, and the uprights were all made for that purpose.

Q. Clear from the dam down to the Cape Horn all the flume line was constructed that way?

A. Yes, sir.

Q. I will ask you what was the reason that that board was not put on in 1910?

A. Well, it was getting pretty late—we were delayed for lumber—and it was rather late in the fall before we made a start to get the lumber on the ground to carry on the work. [1073—923]

Q. I will ask you if the Alaska-Juneau Company interposed any obstacles in the way of your getting a sufficient amount of lumber in 1910 to carry on your work?     A. They did.

Q. What did they do in that regard?

A. Well, I had the lumber all ordered and it was from the George James sawmill on Douglas Island; it was all piled up there—that is, what I required, and the Treadwell Company came along and told

(Testimony of Angus Mackay.)

them they had to give that up; the foreman said he had engaged it, and they said it didn't make any difference.

Q. Did they get the lumber or did you get the lumber?

A. I didn't get it; had to get it from other places.

Q. Now, Mr. Mackay, I believe you stated that you had to close down the work on this mining property looking towards the opening up and developing which has since been carried on—this closing down was sometime in October of what year? A. 1911.

Q. Now, from that time on until sometime in May, 1913, what, if anything, did you do upon this Ebner property—I mean up to the next work that you did looking towards the carrying out and furthering this plan of opening up the property?

A. Well, there wasn't much of anything done, except seeing that the assessment work was done, was about all the money I could get from the east at that time.

Q. What was the cause, Mr. Mackay, of the hanging up of this proposition for that length of time?

A. It was pretty hard to raise money back there, we found out; so much litigation was brought against the company, and jumping of the claims, and it was pretty well known in New York, where they were getting the money.

Q. Who was it that was causing this disturbance of the Ebner Company?

A. The Alaska-Juneau people, I presume. [1074—924]

(Testimony of Angus Mackay.)

Q. Now, Mr. Mackay, you were upon this property, and in charge of it, and have been in charge of it since sometime in August or September, 1910, have you not?     A. Yes; most of the time.

Q. I will ask you if during that time, since 1910, that lower side line of the Lotta has ever been brushed out, only in 1910?     A. Not since 1910.

Q. I will ask you if that line now and ever since 1910, can or cannot be seen from the Basin road that runs up the creek on the other side?

A. Looking across from the Basin road the line is very plain; a trail has been cut through there.

Q. Now, Mr. Mackay, in addition to the money that Mr. Muir has expended or has disbursed in the way of opening up this property, how much money have you disbursed?     A. Approximately \$85,000.00.

Q. And in addition to that there has been some disbursement of money through the hands of Mr. George R. Noble?     A. Yes, sir.

Q. That amount you don't know?     A. I do not.  
Judge WINN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That money, Mr. Mackay, went to the driving of that tunnel and matters of that kind, developing the property?

A. Driving the tunnel, construction of the flume, general supplies, and so on.

Q. It went towards the development of the property in general?     A. Yes, sir.

Q. You took charge in 1910, did you, Mr. Mackay?

(Testimony of Angus Mackay.)

A. Yes, sir; I was acting superintendent. [1075—925]

Q. The flume, you say, you intended to construct to the height that it is now?

A. Eventually, yes; 4 feet.

Q. And you put the timbers up, you say, in 1910 sufficiently large and sufficiently high to allow the addition of this 9-inch board?

A. Yes, and eventually to carry it up to 4 feet.

Q. It was your intention to eventually make it that high? A. Yes, sir.

Q. But the board wasn't put on until this fall?

A. No.

Q. The flume was constructed by you in 1910 and completed in the month of December of that year, wasn't it, Mr. Mackay?

A. Pretty much all, except—

Q. Except that 9-inch board?

A. The penstock wasn't completed.

Q. There was no penstock put in there in 1910—I am speaking about the flume itself.

A. About completed in 1910.

Q. Not quite completed?

A. Not quite; the connections to the penstock were not made.

Q. The penstock was put in and the connections made in 1913?

A. No, the penstock was put in in 1911.

Q. What month of the year?

A. The month of January.

Q. And then you did no more work on the flume



(Testimony of Angus Mackay.)

until you put on this 9-inch board in the fall of 1913?

A. Yes, we done some work on it before that; there was part of the trestle work carried away and we repaired that before we started on the other.

Q. Part of the trestle had been carried out?

A. Yes; with a slide, probably.

Q. And then when did you do that work, Mr. Mackay? A. 1913. [1076—926]

Q. What part of the year? A. The summer.

Q. Sometime in the summer of 1913 you repaired that? A. Yes.

Q. Let's see if I have this right,—you built the flume, at least partially completed it in the fall of 1910—is that right? A. That is right.

Q. Then in January of 1911 you did some more work on the flume, and at that time built the penstock and completed it except that you didn't put on the 9-inch board?

A. The connections were made with the penstock.

Q. That completed it, then, except that 9-inch board, didn't it?

A. No; we covered the flume all over.

Q. Covered the flume, too, and with the exception of the 9-inch board and the cover on the flume, you completed it in January, 1911, is that right?

A. 1911?

Q. Yes.

Q. Well, we put in headgates and so on.

Q. When did you put those in?

A. Last year.

Q. You put in everything except the headgates,



(Testimony of Angus Mackay.)

the cover on the flume and the 9-inch board by January, 1911? A. Yes, sir.

Q. Then you did no more on the flume until the summer of 1913, when you repaired a place that had either been washed out or broken out by slides—that is right, isn't it? A. I think it is.

Q. Then the summer of 1913 you fixed up the flume where part of it had slid out?

A. The trestle work had given way.

Q. And in that same summer a little later on, you put on the 9-inch board—later in the fall of 1913—that is right, [1077—927] isn't it?

A. That is right.

Q. And put the cover on the flume—that is right, isn't it? A. That is right.

Q. You drove part of the tunnel in the mine in 1911, didn't you?

A. Started in 1910, and shut down about October, 1911.

Q. Shut down on the tunnel in October, 1911?

A. Somewhere around there.

Q. What time did you resume work on the tunnel?

A. August, 1913.

Q. Between the time that you shut down on the tunnel in 1911 to the time that you started in August, 1913, there was no work done on the property except doing the assessment work, is that right?

A. That is all.

Q. That was all the work that was done on the property all those years except the work you have testified to—there was no other work done on the property?

(Testimony of Angus Mackay.)

A. I think that is about all, as far as I can remember.

Q. And that matter that you spoke of about the James people, you don't know what the Alaska-Juneau had to do with James, or anything else—you were not present?

A. I know pretty well what happened.

Q. You were not present?

A. I had the word of Mr. James; he is a very truthful man; I have known him for many years.

Q. You don't know anything about these things except what you were told?

A. I know I couldn't get the lumber that was sawed over there; I had no reason to doubt his word.

Q. That was what time in the fall?

A. I think that happened while you were down in Ketchikan.

Q. What month? [1078—928]

A. In November, I think; I wouldn't be certain.

Q. In November, 1910, you say you wanted to buy some lumber from James, and you say the Alaska-Juneau tried to buy the lumber away from you?

A. No; the lumber was already ordered.

Q. Who got that lumber, the Treadwell Company or the Alaska-Juneau Company?

A. Well, he spoke of the Alaska-Treadwell Company.

Q. The Treadwell Company claims to have the first output of the James mill—they claim that right, don't they? A. Yes.

Q. And they exercised that right and took the lum-

(Testimony of Angus Mackay.)

ber that you wanted? A. That I had ordered.

Q. That is all there is about that, isn't it—you got lumber afterwards from other sources?

A. Yes; it was pretty late, though.

Q. But you got your lumber anyhow?

A. Oh, yes; I got it.

Q. That same fall, and continued your work. There are other mills in this country besides the James mill?

A. Well, it was getting very late in the fall, and they were closing down about that time; they don't run all the time up in this country.

Q. Now, these lawsuits that you spoke of that were pending between these companies, weren't they all brought by the Ebner Company against the Alaska-Juneau Company? A. I believe not.

Q. You know those suits were commenced by the Ebner Company, and the Alaska-Juneau are defendants in all these suits, aren't they?

A. No, I don't. [1079—929]

Q. You know, Mr. Mackay, that most of those suits were brought by the Ebner Company, don't you?

A. No. I don't.

Q. And it was the bringing of these lawsuits, you think—did you mean to testify that that in any way interfered with your getting money to carry on your operations? A. Oh, yes.

Q. That was the thing you referred to when you said the Alaska-Juneau—those are the disputes that you referred to as interfering with your getting money? A. The litigation.

(Testimony of Angus Mackay.)

Q. The litigation—that is, these lawsuits that were brought, and that is the only thing you referred to, wasn't it, Mr. Mackay?

A. The litigation and the jumping of the claims.

Q. That was all in connection with the same litigation, wasn't it?      A. Yes.

Q. And there were not any other claims jumped except those that were in litigation—the others were all litigated?      A. I don't know about that.

Q. That is as far as the Alaska-Juneau Company interfered with your getting money?

A. Yes, the litigation and the jumping of the claims.

Q. But the claims you claim were jumped were all in connection with these lawsuits?

A. I presume so.

Q. So it was the litigation, or matters connected with that litigation that you referred to—that is the only thing that the Alaska-Juneau did in any way to hamper you in getting money, was it not?

A. Capitalists are kind of scarey, anyhow, and are easy to slide back. [1080—930]

Q. That is what scared the capitalists, is it?

A. That is my belief, and it is very likely so.

Mr. HELLENTHAL.—That's all.

Redirect Examination.

(By Judge WINN.)

Q. Now, I will ask you if this amount of money that you have testified concerning as having been expended covered the machinery that was purchased?

A. No, it did not.

(Testimony of Angus Mackay.)

Judge WINN.—Now, I desire to ask Mr. Mackay another question, and we will consider him to be recalled.

Q. I will ask you, Mr. Mackey, why it was that this new air-compressor wasn't installed at Shady Bend on Cape Horn No. 2 and used before it was used?

A. Well, we didn't have the money for to install it and to move the machinery away from the dock.

Judge WINN.—That is all.

(WITNESS EXCUSED.)

Judge WINN.—Will you admit that the Ebner Gold Mining Company is a corporation, such as it is alleged in the pleadings in this case, and that it has paid its annual license fee—the same admission you asked me to make?

Mr. HELLENTHAL.—Let the record show that for the purposes of this case I admit that the Ebner Gold Mining Company is a corporation, and has paid its license fee. [1081—931]

WILLIAM M. EBNER, upon being recalled as a witness on behalf of the defendant, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Testimony of William M. Ebner for Defendant  
(Recalled).**

Direct Examination.

(By Judge WINN.)

Q. I think, Mr. Ebner that you testified, when you were on the stand before, that some time ago and about the time that you sold your stock to Mr. Underwood, or made a contract for the purchase of it, that



(Testimony of William M. Ebner.)

you deposited a deed to the Cape Horn lode and the Eureka lode mining claims,—you so testified, didn't you?     A. Yes, sir.

Q. Now, I will hand you a quitclaim deed, marked for identification as Defendant's Exhibit "G-1," and ask you if that is your signature to that instrument?

A. Yes, sir.

Q. Now, I will ask you, Mr. Ebner, if you know what became of those deeds that you executed and left with Mr. Underwood for those two pieces of property?

A. No, sir; I don't; they were all deposited in New York with the escrow papers, and I don't know what became of them.

Judge WINN.—I will state to the Court before offering this deed that we have made a search of the records for those deeds; I supposed they were here on record, but as yet I haven't found them, and I thought the quickest way out of it was to have Mr. Ebner execute another deed for the property to the Ebner Gold Mining Company. I have identified it at this time and if we don't find the others I will offer this in before I close the case. I think that is all, Mr. Ebner. [1082—932]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Ebner, you gave Mr. Underwood a deed, which was put in escrow at the time you sold your stock, to this Cape Horn and Eureka claim?

A. Yes, sir.



(Testimony of William M. Ebner.)

Q. And that deed you haven't been able to find since?

A. I haven't looked for it; I understand it hasn't been placed on record, and nobody seems to know where it is.

Q. That is the reason you executed a new deed to this property? A. Yes, sir.

Q. The old deed was never delivered to Mr. Underwood—or somehow or other it never got on the records, anyhow?

A. It never got on the records, it seems.

Q. All you know about it is it was placed in escrow? A. Yes, sir.

Q. And that is as far as you know about that?

A. Yes, sir.

Judge WINN.—There was no consideration to you for the execution of this deed that I have identified?

A. No, sir.

Q. (By Mr. HELLENTHAL.) This deed was just merely given because about a year ago or so the stock was paid for, wasn't it, Mr. Ebner?

A. About two years ago.

Q. And at that time, Mr. Underwood became entitled to the deed to the Cape Horn and the Eureka?

A. Yes, sir.

Q. So the consideration was paid two years ago for the Cape Horn and Eureka, when it was first given into escrow? A. Yes, sir.

Q. And this deed is given because the deed that Mr. Underwood should have had two years ago has been misplaced? [1083—933] A. Yes, sir.

(Testimony of William M. Ebner.)

Q. Mr. Underwood paid for the property two years ago, and you now give this deed to clear up the property? A. Yes, sir.

Mr. HELLENTHAL.—That's all.

(WITNESS EXCUSED.) [1084—934]

Mr. BURTON.—We now desire to offer in evidence the location notice of the Cape Horn Lode, which is one of the location notices referred to by Mr. Marshall when he was on the stand; location notice of the Eureka lode; deed from George Duke to Anna L. Zimmerly for a  $\frac{1}{3}$  interest in the Eureka and Cape Horn lode claims; deed from Fred Micho to William M. Ebner for a  $\frac{1}{3}$  interest in the Cape Horn and Eureka lodes; deed from Anna L. Zimmerly to William M. Ebner for a  $\frac{1}{3}$  interest in the Eureka and Cape Horn lodes; deed from William M. Ebner to A. S. Lovett for a  $\frac{1}{3}$  interest in the Eureka and Cape Horn lodes; deed from William M. Ebner to William Power Wilson for a  $\frac{1}{3}$  interest in the Cape Horn and Eureka lode claims, and also a  $\frac{1}{6}$  interest in the Cape Horn and Eureka mill sites; deed from Arthur S. Lovett to Anna L. Zimmerly of a  $\frac{1}{3}$  interest in the Eureka and Cape Horn lode claims; deed from William Power Wilson to William M. Ebner of all his right, title and interest in and to the Cape Horn lode claim, the Eureka lode claim and the Cape Horn and Eureka mill sites; and forfeiture notice to Anna L. Zimmerly, signed by William M. Ebner and William Power Wilson.

(Whereupon said instruments were received in evidence and marked, respectively, Defendant's Ex-

hibits "H-1," "I-1," "J-1," "K-1," "L-1," "M-1," "N-1," "O-1," "P-1," and "Q-1.")

Mr. BURTON.—If your Honor please, we will now substitute the certified copies of the exhibits which Mr. Marshall testified about.

The COURT.—Very well.

(Whereupon said exhibits were marked as follows:  
Book 15 Lodes, page 406, Defendant's Exhibit  
R-1.

\*Book 16 Lodes, page 104, Defendant's Exhibit  
S-1.

Book 23, Deeds, page 172, Defendant's Exhibit  
U-1.

Book 25, Deeds, page 1, Defendant's Exhibit V-1.

Book 25, Deeds, page 4, Defendant's Exhibit W-1.

Book 25, Deeds, page 2, Defendant's Exhibit X-1.

Book 19, Lodes, page 304, Defendant's Exhibit Y-1.

Book 23, Deeds, page 419, Defendant's Exhibit Z-1.

Book 20, Lodes, page 104, Defendant's Exhibit A-2.

Book 25, Deeds, page 17, Defendant's Exhibit B-2.

Book 25, Deeds, page 18 Defendant's Exhibit C-2.

\*Book 22 Deeds, page 295, Defendant's Exhibit  
T-1:) [1085—935]

Mr. BURTON.—The papers for which we have substituted certified copies are as follows, respectively: location notice of the Auk Chief; location notice of the Taku Queen; deed from Thomas J. McCully and E. M. Barnes to H. T. Tripp for the Auk Chief and Taku Queen lodes; deed from H. T. Tripp to H. W. Hoops of the Taku Queen and Auk Chief;

deed from Herman W. Hoops to Sidney J. Jennings of the Taku Queen, the Auk Chief, the Fractional Claim, the Parish Mill site and the water right; deed from Sidney J. Jennings to Ebner Gold Mining Company of the Taku Queen, Auk Chief, Fractional Claim, Parish Mill site, and water right; deed from Alaska-Ebner Gold Mines Company to Ebner Gold Mining Company of the Taku Queen, Auk Chief, Fractional Claim, Parish Mill site and water right; location notice of the Cape Horn No. 2 lode; deed from William M. Ebner to H. W. Martin of the Cape Horn No. 2; location notice of the Mackay lode claim; deed from Albert E. Graham to Wm. M. Ebner of the Mackay lode claim; deed from William M. Ebner to Ebner Gold Mining Company of the Mackay lode claim.

We also offer in evidence location notice of the Parish No. 1 lode claim; deed from William M. Ebner to the Ebner Gold Mining Company of the Parish No. 1 lode claim, the Lotta mill site and the Keystone mill site; location notice of the Parish No. 2 lode claim; deed from Alaska-Juneau Gold Mining Company to Ebner Gold Mining Company for the portion of the ground which conflicted with the claim they claimed as the Colorado lode claim.

(Whereupon the said instruments were received in evidence and marked, respectively, Defendant's Exhibits "D-2," "E-2," "F-2," and "G-2.")

Mr. BURTON.—We also offer in evidence location notice of the Fraction placer claim.

(Whereupon said location notice was received in evidence and marked Defendant's Exhibit "H-2.")  
[1086—936]

Mr. BURTON.—I don't care about examining the records any further and I will now offer in evidence the deed that Mr. Ebner identified this morning, being a conveyance by him to the Ebner Gold Mining Company of whatever interest he had in the Cape Horn No. 2 and Eureka.

(Whereupon said deed was received in evidence and marked Defendant's Exhibit "G-1.") [1087—937]

The defendant, to further maintain the issues on its part, recalled as a witness, D. D. MUIR, Jr., who having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions, as follows:

**Testimony of D. D. Muir, Jr., for Defendant  
(Recalled).**

(Question previously asked by the Court repeated to witness, as follows:)

(Questions by the COURT.)

Q. Mr. Muir, I want to get in my mind an idea of how much water-power you require outside of the fact of your ultimate requirements when you get a 200-stamp mill or whatever stamp-mill you might erect for the Ebner operations on your work; I want to know how much water-power you are using and how much water-power *would* need to develop this property until you have arrived at a conclusion where to put your mill?



(Testimony of D. D. Muir, Jr.)

A. Your Honor, that is such a broad question, if I might say so, I cannot correctly answer it for the reason I cannot foresee developments right straight through until we reach the point where the mill is to be built, but I can estimate those things as near as I can, what we will need in the very near future, and then tell you as development progresses it will constantly be on the increase and so our power consumption and power demand will also be on the increase; but what that increase will be I cannot say.

The COURT.—Can you tell me how much water-power, as measured in miner's inches, you are using now and were using at the beginning of this suit?

A. Well, on the first question I have figured out as closely as I can what I consider in the immediate future for the [1088—938] development alone will be the requirement in horse-power, second-feet and miner's inches; I should say that we will need about 30 second-feet, that in miner's inches will be 1200 miner's inches.

Q. That is what you will need in the near future?

A. In the near future for development; that does not include any power for milling purposes or any power demands that might be made in the future on the milling end of it.

Q. But it does include what you might need in operating this stamp-mill?      A. Yes, sir.

Q. Now, tell me how much you were using at the time this suit was begun?

A. Between five and six hundred inches.

Q. How long have you been using and requiring



(Testimony of D. D. Muir, Jr.)

between five and six hundred miner's inches?

A. Well, that would be from about the time the sampling-mill was installed and started.

Q. Was that the time—when was that?

A. That was in—the mill was completed in the early part of May.

Q. 1914? A. This year; yes, sir.

Q. Prior to that, how much were you using?

A. Well, when we started the mill we also started additional developments in the mine, which took additional power; I should say from about six to eight second-feet, that would be between 300 and 350 miner's inches at a maximum.

Q. At what time of the year does Gold Creek get such a scarcity of water that you cannot get that number of inches?

A. I can speak only from what occurred last winter, and that [1089—939] was between the latter part of December and the latter part of February; the latter part of December, 1913, and February, 1914.

The COURT.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Muir, to what did you apply power at the time this suit was commenced?

A. State that question, Mr. Hellenthal, please, again.

Q. To what machine or apparatus did you apply power at the time this suit was commenced?

(Testimony of D. D. Muir, Jr.)

A. Power was being applied to the compressor, to two fans, to the mill and the generator, and machinery in the assay laboratory.

Q. Machinery in the assay laboratory, two fans, a compressor and a five-stamp mill?

A. And the generator.

Q. And for lights? A. Yes, sir.

Q. How many horse-power did it require to operate the lights? A. About 25.

Q. How much for the 5-stamp mill?

A. It requires an equivalent in water consumption of 60 horse.

Q. Sixty horse-power to operate 5 stamps, Mr. Muir?

A. I stated that it required an equivalent amount of water to generate 60 horse-power.

Q. I am asking you how many horse-power does it require to operate that 5-stamp mill?

A. And that is my answer. [1090—940]

Q. Your answer is that it requires 60 horse-power to operate 5 stamps?

A. It requires the equivalent—

Q. I am not asking you what it requires in an equivalent.

A. If I answer your question you will have to allow me to explain and qualify why I make that statement.

Q. I am asking you what amount of power measured in horse-power does it require to operate that 5-stamp mill—about 15 horse-power, doesn't it?

(Testimony of D. D. Muir, Jr.)

A. No; it will require a little more than that, Mr. Hellenthal, on account of the pressure.

Q. How much more?

A. Oh, I should say a minimum of 25 horse-power.

Q. It is the general way of figuring the horse-power required for mills at 5 horse-power per stamp, including the mining and milling and all the other requirements—that is the way we generally figure power in this country, isn't it?

A. Well, I couldn't say in this country; I know it is not customary in other sections of the country, because it depends entirely on the mill and what kind of mining you are doing.

Q. Now, you think this little mill would require how much power measured in horse-power to operate just the mill alone without reference to getting the ore out? . A. Oh, about as I said, 25 horse.

Q. Now, how much does it require to drive that compressor that you have installed there measured in unit horse-power?

A. It would require and equivalent of 600 horse-power.

Q. Equivalent to how much?

A. 600 power—horse-power.

Q. I am not asking you what equivalent it requires; I am asking you how many horse-power—how much actual power measured in [1091—941] unit horse-power does it require to drive that compressor?

A. The compressor is rated at 360 horse.

Q. That is the rated capacity of it, that is the full

(Testimony of D. D. Muir, Jr.)

capacity at 100 pounds, is it not, Mr. Muir?

A. That is 2,000 cubic feet of free air per minute at 100 pounds pressure.

Q. That is the rated requirement of the compressor when operated at full load, is it not?

A. That is right.

Q. Now, how much power, measured in horse-power, does it require to drive your fan—how much does one of those fans require?

A. About 17 horse.

Q. That is included in the generator, isn't it—they are electric fans, aren't they?

A. No, sir; they are belt connected to the water motor.

Q. They are driven by direct power?

A. No, sir; they are belt driven.

Q. They are driven by power directly produced from the water and are not driven by electric power?

A. No.

Q. How much power measured in horse-power does it require for those fans?

A. About 17 horse apiece.

Q. Now, that is all the machinery you have there, isn't it—no, you have an assay office—how much power do you require in that?

A. About 20 horse.

Q. That would be a pretty good, liberal allowance of power for an assay office, wouldn't it, Mr. Muir?

A. Yes. [1092—942]

Q. Now, to drive that generator—do you mean that actually requires 25 horse-power to drive that

(Testimony of D. D. Muir, Jr.)

generator—is that the rated requirement?

A. It will take about that; yes.

Q. Is that what it is rated at?

A. No; it is rated at about 18½ horse; its delivery, there is a loss of ten per cent in there besides the loss at the wheel.

Q. You think it would require or might require 25 horse-power?

A. I am pretty certain that it would require 25 horse-power at the wheel.

Q. Now, that is all the machinery you have, isn't it? A. Yes.

Q. Now, what additional machinery will you be able to use in connection with this mill—that is all the machinery that is now on the ground, isn't it, Mr. Muir? A. Yes, sir.

Q. Now, if you should carry on your development as you are now doing, that is all the machinery you can use, isn't it, Mr. Muir?

A. Oh, no; not necessarily.

Q. What other machinery can you use?

A. We are very shortly going to put additional power in the mill.

Q. Additional power in the mill? A. Yes, sir.

Q. Haven't you got enough power for those 5-stamps?

A. We have other machinery in the mill besides 5-stamps, and we are adding more all the time.

Q. What other machinery have you?

A. We have a concentrator, Vanner, amalgamating barrel and settling pans.

(Testimony of D. D. Muir, Jr.)

Q. Is that all? [1093—943]

A. That is all right now.

Q. A vanner takes one-half horse-power, doesn't it?

A. Yes; I think one and one-half would be a fair estimate.

Q. One-half, not one and one-half, but one-half?

A. Yes; one-half will run it.

Q. What does that amalgamating barrel require—requires one horse-power, doesn't it?

A. Yes, I think that will cover it.

Q. That is all there is, isn't it, Mr. Muir?

A. Well, it will take something to run the concentrator.

Q. How much for the concentrator?

A. Probably one and one-half horse-power.

Q. What kind of a concentrator is that going to be?

A. Well, I haven't decided whether it will be Deester or whether it will be a—

Q. Either one of those concentrators requires one-half horse-power, doesn't it, or at the maximum one horse-power?

A. If that power is delivered direct, yes; but in our case it is not delivered direct; we are delivering power up there through a small pipe and the conditions in the Ebner tunnel are such that it is going to take twice the amount of power and twice the amount of water to deliver the power up there; that is why I speak of the equivalent.

Q. That is because your pipe is not sufficient?

A. That is true.



(Testimony of D. D. Muir, Jr.)

Q. Now, if you install sufficient pipe then you would only require one-half as much power?

A. If we built the plant entirely over we might approach something like that.

Q. Now, what other machinery could you install in connection with your development work that requires power except what [1094—944] you have mentioned?

A. Well, we are going to install another wheel in the mill to run the crushers separately.

Q. The compressor separately?

A. The crusher.

Q. That is a part of the mill requirements, isn't it, that you are now using?

A. Now, Mr. Hellenthal, it is pretty hard to run a crusher on the same wheel as you are running stamps on.

Q. You are not running a crusher and stamps on the same wheel, are you? A. We are.

Q. If you take the crusher off and put in a separate wheel it will not increase the amount of power necessary, will it?

A. It will increase the water equivalent necessary to produce that power.

Q. You will need this power, then, for your stamps because you have taken the load off that wheel, won't you?

A. Yes; we will need more water, because we are piping it through there and we are going to have a greater loss in the head.

Q. You will have two pipes instead of one, and if

(Testimony of D. D. Muir, Jr.)

you have a leaking pipe you will lose that water?

A. No; the pipes are not leaking; it is the size that causes the loss.

Q. That is all you will lose, whatever you lose by friction or otherwise by having two pipes instead of one?

A. Yes; but the power requirements in the near future are, as I have stated, about 30 second-feet or 1200 miner's inches.

Q. Now, the difference, Mr. Muir, in power that you will require after you install this additional wheel in your mill and take off the load from the original wheel and put in [1095—945] this second wheel—how much additional power as measured in horse-power will that require?

A. It will require an equivalent to about 60 horse-power.

Q. I am not asking you for equivalents—how much additional power will that require?

A. To answer your question I have got to tell you the condition up there; we will need that quantity to deliver that power under the present system.

Q. I am asking you how much power as measured in horse-power that wheel will require in addition to what you are now using, not what equivalent in water, but how much in actual power measured in horse-power?

A. That we will have to have at the wheel?

Q. What will it take to run the crusher for the 5-stamp mill?

A. The crusher we have up there will take any-

(Testimony of D. D. Muir, Jr.)

where from 10 to 20 horse-power delivered at the wheel, but to get that at the wheel we have to have an equivalent of 60 horse-power through the pipe-line.

Q. In order to have 10 horse-power you have to waste 50 horse-power?

A. There is no waste in water at all; there is a loss in efficiency but nothing in water.

Q. That is a loss in efficiency of about 400 per cent—is that the kind of machinery that you have established—have you apparatus over there where you lose an efficiency of 400 per cent?

A. I said it would take between 10 and 20 horse-power.

Q. You actually have machinery there that loses efficiency of from three to six hundred per cent?

A. Not the machinery, the loss is in the pipe-line.

Q. That pipe results in so much loss? [1096—946] A. Due to the size of the pipe.

Q. Now, Mr. Muir, what other apparatus do you contemplate installing, if any?

A. Why, as the mine develops there will probably be numerous hoists go in; there will be an electric haulage system; and it is very probable that there may be work done on the upper workings that may necessitate some power.

Q. What kind of a haulage system are you going to put in?

A. We haven't decided yet, but it is pretty sure we are going to put in one pretty soon.

Q. If you put in an electric haulage system, how

(Testimony of D. D. Muir, Jr.)

much will that require in actual horse-power?

A. Why, if it demands—

Q. In connection with your development work now, how much would it require, I mean?

A. We would probably have to increase the size of our motor.

Q. What motor?

A. Generator, I mean, not motor.

Q. What is the capacity now?

A. Eighteen horse.

Q. You would have to develop it to what?

A. Twenty-five to drive it—that would be 25 horse additional.

Q. Now, what other apparatus could you install there in that connection?

A. Well, there will probably come a time when that pipe-line would not be enough, and probably the compressor might not be large enough, and there would probably be the installation of a pipe-line and a new compressor.

Q. That compressor is a pretty good size compressor, isn't it, Mr. Muir?

A. She is rated, as I said, at 1,950 to 2,000 cubic feet per [1097—947] minute, good for about 18 or 20 drills.

Q. That is a good many drills, isn't it, Mr. Muir?

A. That would be equivalent to eight or nine faces, which is not very excessive development.

Q. You don't expect to develop more than eight or nine faces—at any one time, do you?

A. If I knew just exactly what we were going to

(Testimony of D. D. Muir, Jr.)

do I could answer this question very promptly.

Q. You don't know what you are going to do?

A. I cannot foresee our future needs to go ahead and answer this question; I know we are going to develop the property.

Q. You haven't any plans at the present time to put in eight or nine faces at once, have you?

A. The present idea exists at the present to this extent, when that raise is put through and development is started on different levels from that we will undoubtedly have over nine faces, and when that compressor reaches the limit it will be replaced.

Q. How much did you say that compressor was rated at?

A. 1950 to 2,000 cubic feet of air per minute.

Q. You know the horse-power that is required for that? A. 350 horse.

Q. That is all the machinery you could put in there—that is all you could use in the future development work, isn't it, Mr. Muir?

A. Well, we might put in an electric generating plant, and use the electricity underground for hoisting.

Q. We have already calculated that, haven't we, Mr. Muir? A. Oh, no.

Q. How much would you require for that?

A. That would depend on the development.  
[1098—948]

Q. How much could you use on ordinary development work—you could figure pretty close how much additional horse-power that would require?



(Testimony of D. D. Muir, Jr.)

A. Well, you people are using over there about 3,000 horse-power underground; I don't know why the time should not arrive when we shall use an equal amount.

Q. You know, Mr. Muir, that we only use one electric hoist underground, don't you?

A. I didn't say anything about hoists, I said in your operations of mining, you are probably using 3,000 horse-power.

Q. I am asking you now, Mr. Muir, how much additional will it require for generating capacity—how much will you have to enlarge your power for the electric hoist you may need in connection with your development work?

A. If we go into the future and still continue to talk in the future, we might need 3,000 horse-power.

Q. Now, Mr. Muir, I think you ought to come down to earth and talk sense; what I am trying to get at isn't what the probabilities are, but in a reasonable way, Mr. Muir, what additional generating capacity would you require to furnish power for such electric hoist as you might want to put in in connection with your development?

A. A hoist might be put in that would require 75, 100 or 150 horse, depending on the requirements.

Q. Where would you use such a hoist?

A. Depends upon the development.

Q. What would you do with such a thing?

A. We assume, and we are pretty well backed up in our assumption, that there is ore below the present level.